

1 NOAS  
2 DAVID ROGER  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 STEVEN OWENS  
6 Chief Deputy District Attorney  
7 Nevada Bar #004352  
8 200 South Third Street  
9 Las Vegas, Nevada 89155-2212  
10 (702) 455-4711  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

JUN 24 2004

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY Janette M. Bloom  
DEPUTY CLERK

8 THE STATE OF NEVADA,

9 Plaintiff,

10 v.

11 JAMES MONTELL CHAPPELL,

12 Defendant(s).

No. 43493

Case No. C131341

Dept. No. IV

NOTICE OF APPEAL

14 TO: JAMES MONTELL CHAPPELL, Defendant; and

15 TO: DAVID M. SCHIECK, Attorney for Defendant; and

16 TO: KATHY HARDCASTLE, District Judge, Eighth Judicial District, Dept. No. IV

17 NOTICE IS HEREBY GIVEN BY THE STATE OF NEVADA, Plaintiff in the above  
18 entitled matter, appeals to the Supreme Court of Nevada from the Findings of Fact, Conclusions of  
19 Law and Order filed June 3, 2004 Granting Defendant's Petition and Supplemental Petition for Writ  
20 of Habeas Corpus (Post-Conviction) as to his sentence, thereby vacating his sentence and setting the  
21 matter for a new penalty hearing.

22 Dated this 17th day of June, 2004.

23 DAVID ROGER  
24 Clark County District Attorney

25 BY

26 Steven Owens  
27 STEVEN OWENS  
28 Chief Deputy District Attorney  
Nevada Bar # 004352

RECEIVED

JUN 24 2004

CLERK OF SUPREME COURT

By

DEPUTY CLERK

1 CERTIFICATE OF MAILING

2 I hereby certify that service of the above and foregoing NOTICE OF APPEAL was made this  
3 17th day of June, 2004 by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

4  
5 David M. Schieck  
6 Attorney at Law  
7 302 E. Carson, Ste. 600  
8 Las Vegas, Nevada 89101-5905

9  
10 BY

  
Employee, District Attorney's Office

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27 OWENs/englm/Jimenez  
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1 **CASE APPEAL STATEMENT**  
2 **DAVID ROGER**  
3 **Clark County District Attorney**  
4 **Nevada Bar #002781**  
5 **STEVEN OWENS**  
6 **Chief Deputy District Attorney**  
7 **Nevada Bar #004352**  
8 **200 South Third Street**  
9 **Las Vegas, Nevada 89155-2212**  
10 **(702) 671-2750**  
11 **Attorney for Plaintiff**

**FILED**

JUN 18 12 48 PM '04

*Shirley B. Longenecker*  
CLERK

8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10  
11 **STATE OF NEVADA,**

12 **Plaintiff,**

13 **-vs-**

14 **JAMES MONTELL CHAPPELL,**

15 **Defendant(s)**

Case No. C131341

Dept. No. IV

16  
17 **CASE APPEAL STATEMENT**

18 **1. Name of appellant filing this case appeal statement:**

19 The State of Nevada

20 **2. Identify the judge issuing the decision, judgment, or order appealed from:**

21 The Honorable Michael Douglas made the ruling in this case. However, due to  
22 Judge Douglas's appointment to the Nevada Supreme Court, Chief Judge  
23 Kathy Hardcastle executed the Order.

24 **3. Identify all parties to the proceedings in the district court:**

25 James Montell Chappell

26 The State of Nevada

27 **4. Identify all parties involved in this appeal:**

28 Same as #3

1           **5. Name, law firm, address, and telephone number of all counsel on appeal**  
2 **and party or parties whom they represent:**

3 Steven Owens  
4 Chief Deputy District Attorney  
5 Nevada Bar #004352  
6 Clark County District Attorney's Office  
7 200 South Third Street  
8 Las Vegas, Nevada 89155-2212  
9 (702) 671-2750

David M. Schieck  
Attorney at Law  
Nevada Bar #000824  
302 E. Carson, Ste. 600  
Las Vegas, Nevada 89101-5905  
(702) 382-1844

7 Counsel for Appellant  
8 The State of Nevada

Counsel for Respondent  
James Montell Chappell

9           **6. Indicate whether appellant was represented by appointed or retained**  
10 **counsel in the district court: N/A**

11           **7. Indicate whether appellant is represented by appointed or retained**  
12 **counsel on appeal: N/A**

13           **8. Indicate whether appellant was granted leave to proceed in forma**  
14 **pauperis, and the date of entry of the district court order granting such leave: N/A**

15           **9. Date proceedings commenced in the district court:**

16 Pro Per Petition for Writ of Habeas Corpus (Post-Conviction)  
17 filed October 19, 1999.

18 **DATED June 17, 2004.**

19 Respectfully submitted,

20 DAVID ROGER  
21 Clark County District Attorney  
22 Nevada Bar # 002781

23 BY



24 STEVEN OWENS  
25 Chief Deputy District Attorney  
26 Nevada Bar #004352  
27  
28

## CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing Case Appeal Statement was made June 17, 2004, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

**David M. Schieck**  
Attorney at Law  
302 E. Carson, Ste. 600  
Las Vegas, Nevada 89101-5905

Employee, District Attorney's Office

DATE: 06/18/04  
CASE NO. 95-C-131341-C

I N D E X

TIME 2:31 PM  
JUDGE:Hardcastle, Kathy

STATE OF NEVADA

[ ] vs Chappell, James M

[ ]

0001 D1 James M Chappell

000824 Schieck, David M.  
NO. 1 302 E Carson #600  
Las Vegas, NV 89101

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0001	10/10/95	CBO	/CRIMINAL BINDOVER Fee \$0.00				
0002	10/10/95	ARRN	/INITIAL ARRAIGNMENT	0001		10/18/95	
0003	10/11/95	NOEV	/NOTICE OF EXHIBIT(S) IN THE VAULT			10/10/95	
0004	10/18/95	CALC	/CALENDAR CALL (VJ 4-24-96)	0001	VC	05/29/96	
0005	10/18/95	JURY	/TRIAL BY JURY (VJ 4-24-96)	0001	VC	06/03/96	
0006	10/11/95	INFO	/INFORMATION	0001		10/11/95	
0007	11/08/95	HEAR	/NOTICE OF INTENT TO SEEK DEATH PENALTY	0001		11/15/95	
0008	11/15/95	HEAR	/PRETRIAL CONFERENCE (VJ 4-24-96)	0001	VC	05/01/96	
0009	11/15/95	ARGU	/ARGUMENT: ALL PENDING PRETRIAL MOTIONS (VJ 4-24-96)	0001	VC	05/13/96	
0010	11/14/95	TRAN	/REPORTER'S TRANSCRIPT	0001		10/03/95	
0011	01/03/96	REQT	/MEDIA REQUEST				
0012	01/03/96	ORDR	/ORDER GRANTING PERMISSION OF MEDIA ENTRY				
0013	03/27/96	ORDR	/STIPULATION REGARDING BRIEFING SCHEDULE AND ORDER	0001			
0014	04/15/96	MOT	/DEFT'S REQUEST TO CONTINUE TRIAL DATE	0001		04/24/96	
0015	04/23/96	REQT	/DEFENDANTS MOTION TO VACATE JUNE 3 1996 TRIAL DATE AND CONTINUE TRIAL UNTIL	0001			Y
SEPTEMBER							
0016	04/24/96	OCAL	/TRIAL SETTING	0001		05/01/96	
0017	04/26/96	OTTE	/ORDER TO TRANSPORT	0001		04/26/96	
0018	05/01/96	CALC	/CALENDAR CALL	0001		10/02/96	
0019	05/01/96	JURY	/TRIAL BY JURY	0001		10/16/96	
0020	05/01/96	ARGU	/ARGUMENT: PRETRIAL MOTIONS	0001		09/30/96	
0021	05/01/96	OCAL	/STATUS CHECK: TRIAL STATUS	0001	OC	09/25/96	
0022	05/09/96	MOT	/STATE'S MOTION TO ADMIT EVIDENCE OF CRIMES, WRONGS, OR BAD ACTS	0001		10/07/96	
0023	05/09/96	REQT	/NOTICE OF MOTION AND MOTION TO ADMIT EVIDENCE OF OTHER CRIMES WRONGS OR BAD	0001		05/22/96	Y
ACTS							
0024	05/09/96	TRAN	/REPORTER'S TRANSCRIPT OF MAY 1, 1996 OF TRIAL SETTING	0001		05/01/96	
0025	07/09/96	MOT	/STATE'S MOTION TO ENDORSE NAMES ON INFORMATION	0001	GR	07/15/96	
0026	07/09/96	INFO	/MOTION AND NOTICE OF MOTION TO ENDORSE NAMES OF INFORMATION	0001		07/15/96	
0027	10/11/95	CINF	/INFORMATION CORRECTED IN OPEN COURT	0001		07/15/96	
0028	07/15/96	ORDR	/ORDER TO ENDORSE NAMES ON INFORMATION	0001			
0029	07/23/96	MOT	/DEFT'S MOTION TO STRIKE STATE'S NOTICE OF INTENT	0001	DN	09/30/96	
0030	07/23/96	REQT	/DEFENDANTS MOTION TO STRIKE STATES NOTICE OF INTENT TO SEEK DEATH PENALTY	0001			Y
BECAUSE THE PROCEDURE IN THIS CASE IS UNCONSTITUTIONAL							
0031	07/30/96	MOT	/DEFT'S MOTION TO STRIKE ALLEGATIONS OF CERTAIN AGGRAVATING CIRCUMSTANCES ALLEGED	0001	DN	09/30/96	
0032	07/30/96	REQT	/DEFENDANTS MOTION TO STRIKE ALLEGATIONS OF CERTAIN AGGRAVATING CIRCUMSTANCES	0001		09/11/96	Y

(Continued to page 2)

NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
ALLEGED IN STATES NOTICE OF INTENT TO SEEK DEATH PENALTY						
0033	07/31/96	MOT /DEFT'S MOTION TO COMPEL DISCLOSURE OF ANY AND ALL INFO RE: AGGRAVATING FACTORS	0001	MT	09/30/96	
0034	07/31/96	REQT/MOTION TO COMPEL DISCLOSURE BY THE STATE OF ANY AND ALL INFORMATION RELATING TO AGGRAVATING OR MITIGATING FACTORS	0001		09/11/96	Y
0035	08/19/96	MOT /DEFT'S MOTION TO COMPEL EXAMINATION OF DEFT. BY OPTOMETRIST	0001	GR	09/04/96	
0036	08/19/96	REQT/MOTION TO COMPEL EXAMINATION OF DEFENDANT BY OPTOMETRIST AND OBTAIN EYE GLASSES IF NECESSARY	0001		09/04/96	Y
0037	08/22/96	MOT /STATE'S MOTION TO ENDORSE NAMES ON INFORMATION	0001	GR	09/04/96	
0038	08/22/96	INFO/MOTION AND NOTICE OF MOTION TO ENDORSE NAMES OF INFORMATION	0001		09/04/96	
0039	08/29/96	MOT /STATE'S SUPPLEMENTAL MOTION: ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR BAD	0001		10/07/96	
0040	08/29/96	REQT/NOTICE OF MOTION AND SUPPLEMENTAL MOTION TO ADMIT EVIDENCE OF OTHER CRIMES WRONGS OR BAD ACTS	0001		09/04/96	Y
0041	09/04/96	ORDR/ORDER TO ENDORSE NAMES ON INFORMATION	0001			
0042	09/06/96	MOT /ALL PENDING MOTIONS 9-4-96	0001		09/04/96	
0043	09/10/96	MOT /DEFT'S MOTION TO COMPEL PETROCELLI HEARING	0001	GR	09/30/96	
0044	09/10/96	OPPS/DEFENDANTS OPPOSITION TO STATES MOTION TO ADMIT EVIDENCE OF OTHER CRIMES	0001		09/16/96	Y
WRONGS OR BAD ACTS						
0045	09/10/96	REQT/DEFENDANTS MOTION TO COMPEL PETROCELLI HEARING REGARDING ALLEGATIONS OF PRIOR	0001		09/16/96	Y
BAD ACTS						
0046	09/10/96	NOTC/DEFENDANTS OFFER TO STIPULATE TO CERTAIN FACTS	0001			
0047	09/11/96	ANSW/ANSWER TO MOTION TO COMPEL DISCLOSURE BY THE STATE OF ANY AND ALL INFORMATION RELATING TO AGGRAVATING OR MITIGATING FACTORS	0001		09/16/96	Y
0048	10/11/95	CINF/INFORMATION CORRECTED IN OPEN COURT	0001		09/04/96	
0049	09/11/96	OPPS/OPPOSITION TO MOTION TO STRIKE ALLEGATIONS OF CERTAIN AGGRAVATING CIRCUMSTANCES	0001			Y
ALLEGED IN STATES NOTICE OF INTENT TO SEEK DEATH PENALTY						
0050	09/16/96	MOT /DEFT'S MOTION TO CONTINUE	0001	OC	09/23/96	
0051	09/16/96	MOT /ALL PENDING MOTIONS 9-16-96	0001		09/16/96	
0052	09/25/96	ORDR/ORDER	0001			
0053	09/27/96	EXPT/EX PARTE APPLICATION FOR TRANSCRIPT	0001			
0054	09/30/96	MOT /ALL PENDING MOTIONS 9-30-96	0001		09/30/96	
0055	10/04/96	MOT /DEFT'S MOTION IN LIMINE RE EVENTS	0001	RR	10/07/96	
0056	10/04/96	MOT /DEFT'S MOTION IN LIMINE RE DETAILS OF DEFT'S RELEASE	0001	GP	10/07/96	
0057	10/04/96	REQT/DEFENDANTS MOTION IN LIMINE REGARDING DETAILS OF DEFENDANTS RELEASE FROM JAIL	0001		10/07/96	Y
AND FACT THAT HE WAS ON PROBATION						
0058	10/04/96	REQT/DEFENDANTS MOTION IN LIMINE REGARDING EVENTS RELATED TO DEFENDANTS ARREST	0001		10/07/96	Y

(Continued to page 3)

NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
FOR SHOPLIFTING ON SEPTEMBER 1 1995						
0059	10/07/96	MOT /ALL PENDING MOTIONS 10-7-96	0001		10/07/96	
0060	10/08/96	TRAN/REPORTER'S TRANSCRIPT OF JURY TRIAL VOLUME I - MORNING SESSION	0001		10/07/96	
0061	10/04/96	NOTC/SUMMARY OF JUROR QUESTIONNAIRE DEVELOPMENTS	0001			
0062	10/08/96	TRAN/REPORTER'S TRANSCRIPT OF JURY TRIAL VOLUME I - AFTERNOON SESSION	0001		10/07/96	
0063	10/07/96	ORDR/ORDER FOR TRANSCRIPT	0001			
0064	10/09/96	TRAN/REPORTER'S TRANSCRIPT OF JURY TRIAL VOLUME II - MORNING SESSION	0001		10/08/96	
0065	10/09/96	TRAN/REPORTER'S TRANSCRIPT OF JURY TRIAL VOLUME II - AFTERNOON SESSION	0001		10/08/96	
0066	10/09/96	LIST/JURY LIST	0001			
0067	10/11/96	TRAN/REPORTER'S TRANSCRIPT OF JURY TRIAL VOLUME III - MORNING SESSION	0001		10/10/96	
0068	10/11/96	TRAN/REPORTER'S TRANSCRIPT OF JURY TRIAL VOLUME III - AFTERNOON SESSION	0001		10/10/96	
0069	10/11/96	REQT/MEDIA REQUEST				
0070	10/11/96	ORDR/ORDER GRANTING PERMISSON OF MEDIA ENTRY				
0071	10/10/96	STIP/STIPULATION TO CERTAIN FACTS	0001			
0072	10/14/96	TRAN/REPORTER'S TRANSCRIPT OF JURY TRIAL VOLUME IV - MORNING SESSION	0001		10/11/96	
0073	10/14/96	TRAN/REPORTER'S TRANSCRIPT OF JURY TRIAL VOLUME IV - AFTERNOON SESSION	0001		10/11/96	
0074	10/11/96	REQT/DEFENDANTS MOTION TO DISMISS ALL CHARGES BASED ON THE STATES VIOLATION OF THE	0001			Y
EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT						
0075	10/15/96	TRAN/REPORTER'S TRANSCRIPT JURY TRIAL VOLUME V AFTERNOON 2:30 p.m.			10/14/96	Y
VOLUME V AFTERNOON 2:30 p.m.						
0076	10/15/96	TRAN/REPORTER'S TRANSCRIPT OF JURY TRIAL VOLUME V - MORNING SESSION	0001		10/14/96	
0077	10/14/96	ORDR/ORDER TO ENDORSE NAMES ON INFORMATION	0001			
0078	10/14/96	INFO/MOTION AND NOTICE OF MOTION TO ENDORSE NAMES OF INFORMATION	0001		10/14/96	
0079	10/16/96	HEAR/PENALTY HEARING	0001		10/24/96	
0080	10/16/96	TRAN/REPORTER'S TRANSCRIPT OF JURY TRIAL VOLUME VI	0001		10/15/96	
0081	10/17/96	TRAN/REPORTER'S TRANSCRIPT OF JURY TRIAL VOLUME VII - VERDICT	0001		10/16/96	
0082	10/16/96	INST/INSTRUCTIONS TO THE JURY	0001			
0083	10/16/96	VER /VERDICT - COUNT I	0001		10/16/96	
0084	10/16/96	VER /VERDICT - COUNT II	0001		10/16/96	
0085	10/16/96	VER /VERDICT - COUNT III	0001		10/16/96	
0086	10/22/96	TRAN/REPORTER'S TRANSCRIPT OF PENALTY PHASE VOLUME I - MORNING SESSION	0001		10/21/96	
0087	10/22/96	TRAN/REPORTER'S TRANSCRIPT OF PENALTY PHASE VOLUME I - AFTERNOON SESSION	0001		10/21/96	
0088	10/23/96	TRAN/REPORTER'S TRANSCRIPT OF PENALTY PHASE VOLUME II	0001		10/22/96	
0089	10/24/96	SENT/SENTENCING	0001	GR	12/30/96	

(Continued to page 4)



NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0090	10/24/96		NOEV/NOTICE OF EXHIBIT(S) IN THE VAULT			10/07/96	
0091	10/24/96		TRAN/REPORTER'S TRANSCRIPT OF PENALTY PHASE	0001		10/23/96	
			VOLUME III	0001			
0092	10/24/96		TRAN/REPORTER'S TRANSCRIPT OF PENALTY PHASE	0001		10/24/96	
			VOLUME IV - VERDICT	0001			
0093	10/24/96		INST/INSTRUCTIONS TO THE JURY	0001			
0094	10/24/96		INST/SUPPLEMENTAL INSTRUCTION	0001			
0095	10/24/96		VER /VERDICT	0001		10/24/96	
0096	10/24/96		VER /SPECIAL VERDICT	0001		10/24/96	
0097	10/24/96		VER /SPECIAL VERDICT	0001		10/24/96	
0098	10/23/96		LIST/AMENDED JURY LIST	0001			
0099	10/11/95		CINF/INFORMATION CORRECTED IN OPEN COURT	0001		10/14/96	
0100	12/12/96		TRAN/REPORTER'S TRANSCRIPT OF DECEMBER 11,	0001		12/11/96	
			1996 OF PROCEEDINGS	0001			
0101	12/27/96		REQT/DEFENDANTS MOTION FOR STAY OF EXECUTION	0001			
0102	12/30/96		ORDR/ORDER FOR STAY OF EXECUTION	0001			
0103	12/31/96		TRAN/REPORTER'S TRANSCRIPT OF DECEMBER 30,	0001		12/30/96	
			1996 OF PROCEEDINGS	0001			
0104	12/31/96		JUDG/JUDGMENT OF CONVICTION	0001		12/31/96	
0105	01/03/97		ASSG/Reassign Case From Judge MAUPIN TO				
			Judge GIBBONS				
0106	12/31/96		WARR/WARRANT OF EXECUTION	0001			
0107	12/31/96		ORDR/ORDER OF EXECUTION	0001			
0108	12/31/96		JMNT/ADMINISTRATION/ASSESSMENT FEE	0001		12/31/96	
0109	01/03/97		EMO /ENTRY OF MINUTE ORDER	0001			
0110	09/27/96		ORDR/ORDER (FOR TRANSCRIPT)	0001			
0111	01/17/97		CASO/CASE (RE)ACTIVATED ON				
0112	01/17/97		NOTC/NOTICE OF APPEAL	0001	AP		
0113	01/23/97		STAT/CASE APPEAL STATEMENT	0001			
0115	03/17/97		NOTC/NOTICE OF COMPLIANCE WITH SUPREME	0001			Y
			COURT RULE 250 REGARDING MEMORANDUM OF	0001			
DEFENSE COUNSEL							
0116	05/27/97		ORDR/STIPULATION AND ORDER	0001		05/27/97	
0117	06/28/97		ASSG/Reassign Case From Judge GIBBONS to				
			Judge PAVLIKOWSKI				
0118	09/23/99		ASSG/Reassign Case From Judge Pavlikowski TO				
			Judge Gibbons				
0119	10/19/99		PET /DEFT'S PRO PER PETITION FOR WRIT OF	0001	VC	12/16/99	
			HABEAS CORPUS	0001			
0120	10/19/99		REQT/MOTION FOR APPOINTMENT OF COUNSEL	0001			
0121	10/19/99		REQT/MOTION FOR LEAVE TO PROCEED IN FORMA	0001			
			PAUPERIS	0001			
0122	10/19/99		NCA /DECLARATION IN SUPPORT OF MOTION TO	0001			
			PROCEED IN FORMA PAUPERIS	0001			
0123	10/19/99		REQT/MOTION TO PERMIT PETITION TO CONTAIN	0001			
			LEGAL CITATIONS	0001			
0124	10/19/99		NCA /DECLARATION IN SUPPORT OF MOTION TO	0001			Y
			PERMIT PETITION TO CONTAIN LEGAL	0001			
CITATIONS							
0125	10/29/99		HEAR/AT THE REQUEST OF THE COURT:	0001	VC	11/16/99	
			APPOINTMENT OF COUNSEL VJ 11/8/99	0001			
0126	11/02/99		MOT /STATE'S MOTION TO APPOINT COUNSEL FOR	0001	VC	11/16/99	
			CAPITAL MURDER DEFT TO HELP VL 11-12-99	0001			

(Continued to page 5)

NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0127	11/02/09	REQT/NOTICE OF MOTION AND MOTION TO APPOINT COUNSEL FOR CAPITAL MURDER DEFENDANT	0001		11/08/99	Y
		TO HELP PREPARE SUPPLEMENTAL POINTS AND AUTHORITIES FOR PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION	0001			
0128	11/02/99	MOT /STATE'S MOTION TO APPOINT COUNSEL FOR CAPITAL MURDER DEFT TO HELP PREPARE SUPP	0001		11/15/99	
0129	11/15/99	OCAL/STATUS CHECK	0001		01/19/00	
0130	11/04/99	CCJA/NEVADA SUPREME COURT CLERKS CERTIFICATE/ JUDGMENT - AFFIRMED	0001		11/04/99	
0131	11/16/99	TRAN/REPORTER'S TRANSCRIPT	0001		11/15/99	
0132	11/16/99	ORDR/ORDER APPOINTING COUNSEL	0001			
0133	11/19/99	ORDR/ORDER FOR TRANSCRIPT	0001			
0134	11/29/99	ORDR/AMENDED ORDER APPOINTING COUNSEL	0001			
0135	01/13/00	TRAN/REPORTER'S TRANSCRIPT OF STATE'S MOTIONS	0001		11/08/99	
0136	01/19/00	HEAR/HEARING: WRIT (VJ 5/1/01)	0001	VC	05/24/01	
0137	02/29/00	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS - STATUS CHECK	0001		01/19/00	
0138	06/28/00	TRAN/REPORTER'S TRANSCRIPT OF JUNE 27, 2000 PROCEEDINGS	0001		06/27/00	
0139	07/13/00	EXPT/EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEYS FEES IN POST	0001			Y
		CONVICTION PROCEEDINGS	0001			
0140	07/24/00	ORDR/ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEYS FEES	0001		07/24/00	
0141	04/17/01	MOT /STATE'S MOTION TO PLACE ON CALENDAR	0001	MH	05/01/01	
0142	05/01/01	OCAL/STATUS CHECK: BRIEFING SCHEDULE	0001		04/18/02	
0143	05/17/01	REQT/EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEYS FEES IN POST	0001			Y
		CONVICTION PROCEEDINGS	0001			
0144	06/13/01	TRAN/REPORTER'S TRANSCRIPT OF 06/12/01	0001		06/12/01	
0145	06/07/01	ORDR/ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEYS FEES	0001		06/07/01	
0146	07/14/01	ASSG/Reassign Case From Judge Gibbons TO Judge Douglas				
0147	08/28/01	TRAN/REPORTER'S TRANSCRIPT OF STATUS CHECK ON BRIEFING SCHEDULE	0001		07/26/01	
0148	04/11/02	REQT/EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEYS FEES IN POST CONVICTION	0001			Y
		PROCEEDINGS	0001			
0149	04/12/02	ORDR/ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEYS FEES	0001		04/12/02	
0150	04/18/02	HEAR/HEARING: WRIT	0001		07/25/02	
0151	04/30/02	PET /SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION POINTS AND	0001			Y
		AUTHORITIES IS SUPPORT THEREOF				
		AUTHORITIES IS SUPPORT THEREOF				
0152	06/19/02	RSPN/STATES RESPONSE TO DEFENDANTS SUPPLEMENTAL PETITION FOR WRIT OF	0001			Y
		HABEAS CORPUS POST CONVICTION	0001			
0153	07/08/02	REQT/EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEYS FEES IN POST	0001			Y
		CONVICTION PROCEEDINGS	0001			

(Continued to page 6)

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0154	07/10/02	ORDR/	ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEYS FEES	0001		07/10/02	
0155	07/25/02	HEAR/	EVIDENTIARY HEARING: DEFT'S PETITION FOR WRIT OF HABEAS CORPUS	0001	MH	09/13/02	
0156	07/30/02	REQT/	EX PARTE MOTION FOR ORDER TO TRANSPORT PETITIONER	0001	SC	09/13/02	
0157	07/31/02	OTTE/	EX PARTE ORDER TO TRANSPORT PETITIONER	0001		09/13/02	
0158	08/19/02	TRAN/	REPORTER'S TRANSCRIPT RE: HEARING WRIT	0001		07/25/02	
0159	09/13/02	OCAL/	STATUS CHECK: SUPPLEMENT TO THE RECORD	0001		12/03/02	
0160	09/18/02	REQT/	EX AP RTE MOTION FOR APPOINTMENT OF INVESTIGATOR AND FOR EXCESS FEES	0001			
0161	09/24/02	ORDR/	ORDER APPOINTING INVESTIGATOR AND GRANTING EXCESS FEES	0001		09/24/02	
0162	09/24/02	TRAN/	REPORTER'S TRANSCRIPT RE: EVIDENTIARY HEARING DEFTS PETITION FOR WRIT OF	0001		09/13/02	Y
HABEAS CORPUS							
0163	09/26/02	ACKN/	ACKNOWLEDGEMENT AND WAIVER	0001			
0164	10/15/02	REQT/	EX PARTE MOTION FOR CHANGE OF INVESTIGATOR EX PARTE MOTION FOR FEES	0001			Y
IN EXCESS OF STATUTORY LIMIT AND EX PARTE MOTION FOR CONTACT VISITS							
0166	11/18/02	APPL/	EX PARTE APPLICATION TO UNSEAL PSI	0001			
0167	12/03/02	OCAL/	STATUS CHECK: FILING OF AFFIDAVIT	0001		03/11/03	
0168	12/03/02	EXPR/	EX PARTE ORDER TO UNSEAL PSI	0001		12/03/02	
0169	12/11/02	REQT/	EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEYS FEES IN POST	0001			Y
CONVICTION PROCEEDINGS							
0170	12/12/02	ORDR/	ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEYS FEES	0001		12/12/02	
0171	12/23/02	TRAN/	REPORTER'S TRANSCRIPT HEARING: WRIT	0001		11/06/00	
0172	02/03/03	REQT/	EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEYS FEES IN POST	0001			Y
CONVICTION PROCEEDINGS							
0173	02/04/03	ORDR/	ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEYS FEES	0001		02/04/03	
0174	03/11/03	OCAL/	STATUS CHECK: STATE'S REVIEW OF AFFIDAVITS	0001		03/25/03	
0175	03/07/03	AFFD/	AFFIDAVITS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS-POST CONVICTION	0001			
0176	03/10/03	AFFD/	AFFIDAVITS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS-POST CONVICTION	0001			
0177	03/25/03	HEAR/	HEARING: DEFT'S PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)	0001		10/07/03	
0178	07/14/03	BREF/	POST EVIDENTIARY HEARING BRIEF	0001			
0179	09/02/03	OCAL/	STATUS CHECK: SET HEARING DATE RE DEFT'S PETITION FOR WRIT OF HABEAS COR(VL 9/18)	0001	VC	10/21/03	
0180	09/02/03	OCAL/	MINUTE ORDER RE: HEARING RE WRIT/44	0001		09/02/03	
0181	09/02/03	ORDR/	STIPULATION AND ORDER EXTENDING TIME	0001	SC	10/07/03	
0182	10/07/03	HEAR/	HEARING: DEFT'S PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)/47	0001	MH	04/02/04	
0183	10/26/03	ASSG/	Reassign Case From Judge Douglas To Judge Leavitt				
0184	11/07/03	HEAR/	AT THE REQUEST OF THE COURT (VL 12/8/03)	0001	VC	12/11/03	

(Continued to page 7)

NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0185	11/10/03	OCAL/MINUTE ORDER RE: CASE RETAINED BY DEPT XI	NP NP		11/10/03	
0186	11/10/03	ASSG/REASSIGNMENT OF JUDGE Leavitt TO JUDGE Douglas				
0187	01/27/04	REQT/EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEYS FEES IN POST	0001 0001			Y
		CONVICTION PROCEEDINGS				
0188	01/28/04	ORDR/ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEYS FEES	0001 0001		01/28/04	
0189	04/08/04	REQT/EX PARTE MOTION FOR AN ORDER TO PRODUCE DEFENDANTS INSTITUTIONAL FILE	0001 0001			
0190	04/12/04	EXPR/EX PARTE ORDER TO PRODUCE INSTITUTIONAL FILE	0001 0001		04/12/04	
0191	05/22/04	ASSG/Reassign Case From Judge Douglas To Judge Hardcastle				
0192	06/03/04	JUDG/FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER	0001 0001		06/03/04	
0193	06/10/04	NOED/NOTICE OF ENTRY OF DECISION AND ORDER	0001		06/03/04	

David M. Schieck  
Attorney At Law  
302 E. Carson Ave., Ste. 600  
Las Vegas, NV 89101  
(702) 382-1844

COUNTY CLERK

JUN - 3 2004

RECEIVED

1 FFCL  
2 DAVID M. SCHIECK, ESQ.  
3 Nevada Bar No. 0824  
4 302 East Carson, Ste. 600  
5 Las Vegas, NV 89101  
6 702-382-1844  
7 Attorney for CHAPPELL

FILED

JUN 3 4 31 PM '04

*Shirley S. Rungius*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \*

JAMES MONTELL CHAPPELL,	)	CASE NO. C 131341
	)	DEPT. NO. XI IV
Petitioner,	)	
	)	
vs.	)	
	)	
THE STATE OF NEVADA,	)	
	)	
Respondent.	)	DATE: N/A
	)	TIME: N/A

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Petition and Supplemental Petition for Habeas Corpus (Post Conviction) having come on for hearing before the Honorable Michael Douglas, District Court Judge, on April 2, 2004, the Petitioner not present, represented by David M. Schieck, Esq., and the State of Nevada by Chief Deputy District Attorney Clark Peterson; the Court having considered the evidence produced at the Evidentiary Hearing and the pleadings and affidavits on file; now makes the following Findings of Fact, Conclusions of Law and Judgment:

FINDINGS OF FACT

1. The Court has considered all claims regarding errors of trial counsel at the trial phase and finds that any errors

1 were harmless due to the overwhelming evidence of guilt.

2       2. The Court need not address the first prong of  
3 Strickland v. Washington, 566 U.S. 668, 104 S.Ct. 2052 (1984)  
4 that there was deficient performance of trial counsel as the  
5 Court has determined that none of the claimed errors prejudiced  
6 the outcome of the case.

7       3. Based on the Court's determination that none of the  
8 claimed trial errors would have effected the outcome of the  
9 trial the Court makes no determination as to the merits of any  
10 claimed errors or deficiencies.

11       4. With respect to the penalty hearing, the Court finds  
12 that there were several witnesses that were available to  
13 provide testimony in mitigation from both Michigan and Arizona.

14       5. Defense counsel was deficient in not locating and  
15 presenting these witnesses at the penalty hearing. The  
16 substance of the testimony is reflected in affidavits submitted  
17 by CHAPPELL which the Court finds sufficient to determine that  
18 the outcome of the penalty hearing cannot be relied upon as  
19 having produced a just result. The outcome of the penalty  
20 hearing was prejudiced by the failure to produce and present  
21 the numerous witnesses that could have described CHAPPELL and  
22 the dynamics of his relationship with the victim and their  
23 children.  
24

25                   CONCLUSIONS OF LAW

26       1. A criminal defendant is entitled to receive reasonable  
27 effective assistance of counsel through trial, including the  
28

1 penalty hearing, and upon direct appeal of his conviction.  
2 Strickland v. Washington, 460 U.S. 668 (1984). In order to  
3 establish a claim of ineffective assistance of counsel the  
4 defendant must establish first that counsel's performance was  
5 deficient and second that the deficient performance prejudiced  
6 the defense.

7 2. Deficient assistance requires a showing that trial  
8 counsel's representation of the defendant fell below an  
9 objective standard of reasonableness. If the defendant  
10 establishes that counsel's performance was deficient, the  
11 defendant must next show that, but for counsel's error, the  
12 result of the trial probably would have been different. State  
13 v. Love, 109 Nev. 1136, 1138, 865 P.2d 322 (1993).

14 3. The performance of trial counsel is found to be  
15 deficient in failing to locate, interview and call as witnesses  
16 at the penalty hearing numerous witnesses that would have  
17 established mitigating factors for CHAPPELL.

18 4. The failures of counsel were prejudicial to CHAPPELL'S  
19 defense and were so serious as to deprive CHAPPELL of fair  
20 penalty hearing, to wit: a penalty hearing whose result was  
21 reliable, such that, but for counsel's error the result of the  
22 penalty hearing probably would have been different.

23 5. Pre-trial investigation and preparation for trial are  
24 key to effective representation of counsel. Defense counsel  
25 has a duty "to make reasonable investigation or to make a  
26 reasonable decision that makes particular investigation  
27  
28

David M. Schieck

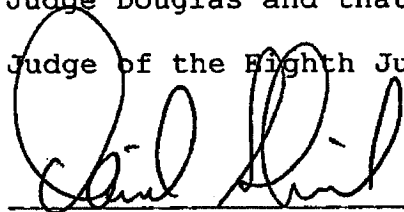
Attorney At Law

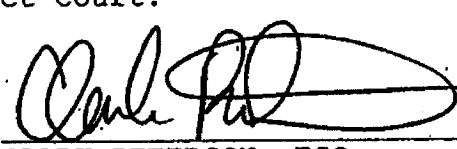
302 E. Carson Ave., Ste. 600  
Las Vegas, NV 89101  
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unnecessary." Strickland, 466 U.S. at 691; State v. Love, 109 Nev. 1136, 865 P.2d 322 (1993). Counsel is required to present all available mitigation evidence at a penalty hearing in a capital case.

STIPULATION OF COUNSEL

Due to the appointment of Judge Michael Douglas to the Nevada Supreme Court, the above named parties by and through their respective counsel hereby stipulate that the Findings of Fact and Conclusions of Law adequately reflect the ruling of Judge Douglas and that the Order may be executed by the Chief Judge of the Eighth Judicial District Court.

  
DAVID M. SCHIECK, ESQ.  
Attorney for CHAPPELL  
302 E. Carson, Ste. 600  
Las Vegas NV 89101

  
CLARK PETERSON, ESQ.  
District Attorney's Office  
200 S. Third Street  
Las Vegas NV 89155

ORDER

Based on the Findings of Fact and Conclusions of Law herein contained, it is hereby

ORDERED, ADJUDGED AND DECREED that JAMES CHAPPELL'S Petition and Supplemental Petition for Habeas Corpus (Post Conviction) is denied as to his Conviction and granted as to his sentence which is hereby vacated and the matter is to be reset for a new penalty hearing.

DATED AND DONE: June 2<sup>nd</sup>, 2004

  
DISTRICT COURT JUDGE *RM*



ORIGINAL

FILED

JUN 10 10 27 AM '04

Shirley B. Parraguirre  
CLERK

NOED

District Court

Clark County, Nevada

JAMES MONTELL CHAPPELL,

Petitioner,

vs

THE STATE OF NEVADA,

Respondent.

Case No. C131341

Dept. No. IV

NOTICE OF ENTRY OF  
DECISION AND ORDER

PLEASE TAKE NOTICE that on June 3, 2004, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on June 10, 2004.

SHIRLEY B. PARRAGUIRRE, CLERK OF COURT

By:

Norreta Caldwell, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on the 10 day of June, 2004, I placed a copy of this Notice of Entry of Decision and Order in:

The bin(s) located in the Office of the County Clerk of:  
Clark County District Attorney's Office - Appellate Division  
Attorney General's Office - Appellate Division

☐ The United States mail addressed as follows:

David M Schieck - Attorney  
302 East Carson #600  
Las Vegas, Nv 89101

Norreta Caldwell, Deputy Clerk

Notice of Entry of Decision and Order/2-01/jh

3

1 FFCL  
2 DAVID M. SCHIECK, ESQ.  
3 Nevada Bar No. 0824  
302 East Carson, Ste. 600  
4 Las Vegas, NV 89101  
702-382-1844  
Attorney for CHAPPELL

FILED

JUN 3 4 31 PM '04

*Shirley S. Ruggins*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \*

9 JAMES MONTELL CHAPPELL, ) CASE NO. C 131341  
10 ) DEPT. NO. XI IV  
11 Petitioner, )  
12 vs. )  
13 THE STATE OF NEVADA, )  
14 Respondent. ) DATE: N/A  
TIME: N/A

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

16 The Petition and Supplemental Petition for Habeas Corpus  
17 (Post Conviction) having come on for hearing before the  
18 Honorable Michael Douglas, District Court Judge, on April 2,  
19 2004, the Petitioner not present, represented by David M.  
20 Schieck, Esq., and the State of Nevada by Chief Deputy District  
21 Attorney Clark Peterson; the Court having considered the  
22 evidence produced at the Evidentiary Hearing and the pleadings  
23 and affidavits on file; now makes the following Findings of  
24 Fact, Conclusions of Law and Judgment:

FINDINGS OF FACT

26 1. The Court has considered all claims regarding errors  
27 of trial counsel at the trial phase and finds that any errors  
28

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COUNTY CLERK

JUN - 3 2004

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**David M. Schieck**  
Attorney At Law  
302 E. Carson Ave., Ste. 600  
Las Vegas, NV 89101  
(702) 382-1844

1 were harmless due to the overwhelming evidence of guilt.

2 2. The Court need not address the first prong of  
3 Strickland v. Washington, 566 U.S. 668, 104 S.Ct. 2052 (1984)  
4 that there was deficient performance of trial counsel as the  
5 Court has determined that none of the claimed errors prejudiced  
6 the outcome of the case.

7 3. Based on the Court's determination that none of the  
8 claimed trial errors would have effected the outcome of the  
9 trial the Court makes no determination as to the merits of any  
10 claimed errors or deficiencies.

11 4. With respect to the penalty hearing, the Court finds  
12 that there were several witnesses that were available to  
13 provide testimony in mitigation from both Michigan and Arizona.

14 5. Defense counsel was deficient in not locating and  
15 presenting these witnesses at the penalty hearing. The  
16 substance of the testimony is reflected in affidavits submitted  
17 by CHAPPELL which the Court finds sufficient to determine that  
18 the outcome of the penalty hearing cannot be relied upon as  
19 having produced a just result. The outcome of the penalty  
20 hearing was prejudiced by the failure to produce and present  
21 the numerous witnesses that could have described CHAPPELL and  
22 the dynamics of his relationship with the victim and their  
23 children.  
24

25 CONCLUSIONS OF LAW

26 1. A criminal defendant is entitled to receive reasonable  
27 effective assistance of counsel through trial, including the  
28

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Attorney At Law  
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Las Vegas, NV 89101  
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2 Strickland v. Washington, 460 U.S. 668 (1984). In order to  
3 establish a claim of ineffective assistance of counsel the  
4 defendant must establish first that counsel's performance was  
5 deficient and second that the deficient performance prejudiced  
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8 counsel's representation of the defendant fell below an  
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10 establishes that counsel's performance was deficient, the  
11 defendant must next show that, but for counsel's error, the  
12 result of the trial probably would have been different. State  
13 v. Love, 109 Nev. 1136, 1138, 865 P.2d 322 (1993).

14 3. The performance of trial counsel is found to be  
15 deficient in failing to locate, interview and call as witnesses  
16 at the penalty hearing numerous witnesses that would have  
17 established mitigating factors for CHAPPELL.

18 4. The failures of counsel were prejudicial to CHAPPELL'S  
19 defense and were so serious as to deprive CHAPPELL of fair  
20 penalty hearing, to wit: a penalty hearing whose result was  
21 reliable, such that, but for counsel's error the result of the  
22 penalty hearing probably would have been different.

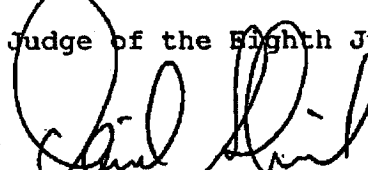
23 5. Pre-trial investigation and preparation for trial are  
24 key to effective representation of counsel. Defense counsel  
25 has a duty "to make reasonable investigation or to make a  
26 reasonable decision that makes particular investigation  
27  
28

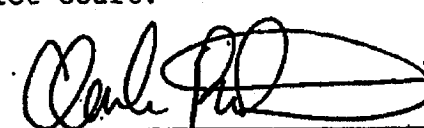
David M. Schieck  
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unnecessary." Strickland, 466 U.S. at 691; State v. Love, 109 Nev. 1136, 865 P.2d 322 (1993). Counsel is required to present all available mitigation evidence at a penalty hearing in a capital case.

STIPULATION OF COUNSEL

Due to the appointment of Judge Michael Douglas to the Nevada Supreme Court, the above named parties by and through their respective counsel hereby stipulate that the Findings of Fact and Conclusions of Law adequately reflect the ruling of Judge Douglas and that the Order may be executed by the Chief Judge of the Eighth Judicial District Court.

  
DAVID M. SCHIECK, ESQ.  
Attorney for CHAPPELL  
302 E. Carson, Ste. 600  
Las Vegas NV 89101

  
CLARK PETERSON, ESQ.  
District Attorney's Office  
200 S. Third Street  
Las Vegas NV 89155

ORDER

Based on the Findings of Fact and Conclusions of Law herein contained, it is hereby

ORDERED, ADJUDGED AND DECREED that JAMES CHAPPELL'S Petition and Supplemental Petition for Habeas Corpus (Post Conviction) is denied as to his Conviction and granted as to his sentence which is hereby vacated and the matter is to be reset for a new penalty hearing.

DATED AND DONE: June 2<sup>nd</sup>, 2004

  
DISTRICT COURT JUDGE *RM*

## CRIMINAL COURT MINUTES

95-C-131341-C      STATE OF NEVADA      vs Chappell, James M

---

10/18/95    09:00 AM    00    INITIAL ARRAIGNMENT

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: TINA HURD, Court Clerk  
PATSY SMITH, Reporter/Recorder

PARTIES:                    STATE OF NEVADA  
                              003813    Silver, Abbi  
  
                              0001 D1    Chappell, James M  
                              PUBDEF    Public Defender  
                              004214    Bassett, Kedric

Y  
Y  
  
Y  
Y  
Y

DEFT. CHAPPELL ARRAIGNED, PLED NOT GUILTY AND WAIVED THE 60-DAY RULE. COURT ORDERED, matter set for trial. Upon Court's inquiry, State advised they have not determined if this will be a capital case but it will be determined within the next few days. Court advised, if that determination is made, counsel is to place the matter back on calendar.

CUSTODY

5-29-96 9:00 AM CALENDAR CALL

6-3-96 10:00 AM JURY TRIAL

---

11/15/95    09:00 AM    00    NOTICE OF INTENT TO SEEK DEATH PENALTY

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: TINA HURD, Court Clerk  
CONNIE MILLER, Reporter/Recorder

PARTIES:                    STATE OF NEVADA  
                              003813    Silver, Abbi  
  
                              0001 D1    Chappell, James M  
                              PUBDEF    Public Defender  
                              003374    Brooks, Howard S.

Y  
Y  
  
Y  
Y  
Y

Court advised we need to set a 250 briefing schedule. State concurred. Court advised the Notice of Intent to Seek the Death Penalty has been filed on November 8. COURT ORDERED, the following briefing schedule is set:

Deft's motions to be filed by APRIL 1, 1996;  
State's response to be filed by APRIL 22, 1996;  
Deft's replies to be filed by MAY 6, 1996;  
Matter set for argument on May 13.

COURT FURTHER ORDERED, this matter is set for a pre-trial conference in chambers with counsel on May 1.

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 001

CUSTODY

5-1-96 10:30 AM PRETRIAL CONFERENCE

5-13-96 9:00 AM ARGUMENT: ALL PENDING PRETRIAL MOTIONS

04/17/96 09:00 AM 00 DEFT'S REQUEST TO CONTINUE TRIAL DATE

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: LORI BROWN, Court Clerk  
PATSY SMITH, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	003649 Kephart, William D.	Y
	0001 D1 Chappell, James M	Y
	PUBDEF Public Defender	Y
	000556 Kohn, Philip J.	Y

Mr. Kohn advised that Mr. Brooks, DPD, was in the process of preparing a written motion to continue when he became ill. As the State agrees that a written motion should be filed; COURT ORDERED, matter CONTINUED for that purpose.

CUSTODY

CONTINUED TO: 04/24/96 09:00 AM 01

04/24/96 09:00 AM 01 DEFT'S REQUEST TO CONTINUE TRIAL DATE

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: TINA HURD, Court Clerk  
PATSY SMITH, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	003813 Silver, Abbi	Y
	0001 D1 Chappell, James M	Y
	PUBDEF Public Defender	Y
	003374 Brooks, Howard S.	Y

Court advised he understands Mr. Brooks' problem and understood this case would be continued when the Court placed the Bolin trial into the June 3 trial stack. State advised they are ready and were preparing to issue subpoenas. Court advised he is more than satisfied that this is not a ploy and the Court has the utmost confidence in Mr. Brooks' integrity. COURT

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 002

ORDERED, TRIAL DATE VACATED; counsel to speak with each other and with the Court Clerk as to a suitable trial date; matter CONTINUED for trial setting.

CUSTODY

5-1-96 9:00 AM TRIAL SETTING

05/01/96 09:00 AM 00 TRIAL SETTING

HEARD BY: Gene Porter, Judge

OFFICERS: LORI BROWN, Court Clerk  
JANICE LISTON, Reporter/Recorder

PARTIES: 0001 D1 Chappell, James M  
PUBDEF Public Defender  
003374 Brooks, Howard S.

Y  
Y  
Y

Mr. Brooks advised that Ms. Silver, DDA, was present earlier, and parties have stipulated to the following briefing schedule:

Pretrial motions to be filed by July 1, 1996  
Oppositions to be filed by August 5, 1996  
Replies to be filed by August 16, 1996  
Matter SET for argument September 11, 1996  
Matter SET for status check September 25, 1996

Mr. Brooks further advised that he and Ms. Silver have stipulated to a trial date being SET in the October stack. COURT SO ORDERED.

CUSTODY

9-11-96 10:00 A.M. ARGUMENT: PRETRIAL MOTIONS

9-25-96 9:00 A.M. STATUS CHECK: TRIAL STATUS

10-2-96 9:00 A.M. CALENDAR CALL

10-7-96 10:00 A.M. JURY TRIAL



## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 003

05/22/96 09:00 AM 00 STATE'S MOTION TO ADMIT EVIDENCE OF  
CRIMES, WRONGS, OR BAD ACTS

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: TINA HURD, Court Clerk  
PATSY SMITH, Reporter/Recorder

PARTIES: STATE OF NEVADA  
004515 Tobiasson, Melanie A.  
  
0001 D1 Chappell, James M  
PUBDEF Public Defender  
003374 Brooks, Howard S.

Y  
Y  
  
Y  
Y  
Y

Mr. Brooks advised Ms. Silver cannot be here, however, they have agreed that this motion can be heard on September 11 with the other motions, with the same briefing schedule. State accepted Mr. Brooks representations and advised, if Ms. Silver wants this motion on before then, she can place it on calendar. COURT ORDERED, matter CONTINUED to September.

CUSTODY

CONTINUED TO: 09/11/96 09:00 AM 01

07/15/96 09:00 AM 00 STATE'S MOTION TO ENDORSE NAMES ON  
INFORMATION

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: LORI BROWN, Court Clerk  
PATSY SMITH, Reporter/Recorder

PARTIES: STATE OF NEVADA  
004515 Tobiasson, Melanie A.  
  
0001 D1 Chappell, James M  
PUBDEF Public Defender  
003374 Brooks, Howard S.

Y  
Y  
  
Y  
Y  
Y

There being no opposition, COURT ORDERED, motion GRANTED. Order signed and FILED IN OPEN COURT this date.

CUSTODY

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA vs Chappell, James M

CONTINUED FROM PAGE: 004

09/04/96 09:00 AM 00 ALL PENDING MOTIONS 9-4-96

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: LORI BROWN, Court Clerk  
PATSY SMITH, Reporter/RecorderPARTIES: STATE OF NEVADA  
003231 Chrysanthis, Alexandra C.  
0001 D1 Chappell, James M  
PUBDEF Public Defender  
003374 Brooks, Howard S.Y  
Y  
Y  
Y  
YDEFT'S MOTION TO COMPEL EXAMINATION OF DEFT BY OPTOMETRIST...STATE'S MOTION  
TO ENDORSE NAMES ON INFORMATION...STATE'S SUPPLEMENTAL MOTION: ADMIT  
EVIDENCE OF OTHER CRIMES, WRONGS OR BAD ACTS

As to the Deft's Motion to Compel Examination of Deft. by Optometrist: Mr. Brooks advised that deft. wants glasses, and the jail will comply with a court order. Matter submitted by the State. COURT ORDERED, motion GRANTED. As to the State's Motion to Endorse Names on Information: Mr. Brooks advised that he objects to same, but will try to investigate the names endorsed by the time set for trial. The Court noted that the trial is set one month from now, and he is concerned that this motion may compromise the trial date. Ms. Chrysanthis advised that defense counsel was already aware of the State's motion regarding prior bad acts, the basis for said endorsements; and suggested that the Court reserve ruling until that motion is heard. Mr. Brooks advised that he is concerned with the number of people from Tucson. COURT ORDERED, motion GRANTED; and noted that if the State's motion regarding prior bad acts is denied, then a good portion of this order will become moot. The Court suggested that Ms. Chrysanthis ask Ms. Silver to notify defense counsel of the point people on said prior bad act. Mr. Brooks advised that Ms. Silver has agreed to CONTINUE the remaining motion, as well as those set for September 11, to September 16. COURT SO ORDERED. Order to Endorse Names on Information signed and FILED IN OPEN COURT this date.

CUSTODY

9-16-96 9:00 A.M. STATE'S SUPPLEMENTAL MOTION: ADMIT EVIDENCE OF OTHER  
CRIMES, WRONGS OR BAD ACTS...ARGUMENT: PRETRIAL MOTIONS

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA vs Chappell, James M

CONTINUED FROM PAGE: 005

09/16/96 09:00 AM 00 ALL PENDING MOTIONS 9-16-96

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: LORI BROWN, Court Clerk  
PATSY SMITH, Reporter/RecorderPARTIES: STATE OF NEVADA  
003813 Silver, Abbi  
0001 D1 Chappell, James M  
PUBDEF Public Defender  
003374 Brooks, Howard S.Y  
Y  
Y  
Y  
Y

ARGUMENT: PRETRIAL MOTIONS...DEFT'S MOTION TO STRIKE ALLEGATIONS OF CERTAIN AGGRAVATING CIRCUMSTANCES ALLEGED...DEFT'S MOTION TO STRIKE STATE'S NOTICE OF INTENT...DEFT'S MOTION TO COMPEL DISCLOSURE OF ANY AND ALL INFO RE: AGGRAVATING FACTORS...DEFT'S MOTION TO COMPEL PETROCELLI HEARING...STATE'S MOTION TO ADMIT EVIDENCE OF CRIMES, WRONGS OR BAD ACTS...STATE'S SUPPLEMENTAL MOTION: ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR BAD ACTS

Mr. Brooks advised that he will be filing a motion to continue. Colloquy between Court and counsel as to same. COURT ORDERED, Deft's Motion to Continue will be heard one week from today. FURTHER, per stipulation of counsel, remaining matters CONTINUED two weeks.

## CUSTODY

9-23-96 9:00 A.M. DEFT'S MOTION TO CONTINUE

9-30-96 9:00 A.M. ARGUMENT: PRETRIAL MOTIONS

09/23/96 09:00 AM 00 DEFT'S MOTION TO CONTINUE

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: TINA HURD, Court Clerk  
PATSY SMITH, Reporter/RecorderPARTIES: STATE OF NEVADA  
003649 Kephart, William D.  
0001 D1 Chappell, James M  
PUBDEF Public Defender  
003447 Immerman, Stephen M.Y  
Y  
Y  
Y  
Y

COURT ORDERED, matter OFF CALENDAR as the motion is being withdrawn.

## CUSTODY

CONTINUED ON PAGE: 007

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 006

09/25/96 09:00 AM 00 STATUS CHECK: TRIAL STATUS

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: TINA HURD, Court Clerk  
PATSY SMITH, Reporter/RecorderPARTIES: STATE OF NEVADA  
000862 Harmon, Melvyn T.0001 D1 Chappell, James M  
PUBDEF Public Defender  
003374 Brooks, Howard S.

Y

Y

Y

Y

Y

Mr. Brooks stated he believes this can be dealt with after the hearing on the motions on Monday. COURT ORDERED, matter OFF CALENDAR.

CUSTODY

09/30/96 09:00 AM 00 ALL PENDING MOTIONS 9-30-96

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: TINA HURD, Court Clerk  
PATSY SMITH, Reporter/RecorderPARTIES: STATE OF NEVADA  
000862 Harmon, Melvyn T.  
003813 Silver, Abbi0001 D1 Chappell, James M  
PUBDEF Public Defender  
003374 Brooks, Howard S.

Y

Y

Y

Y

Y

Y

ARGUMENT: PRETRIAL MOTIONS...DEFT'S MOTION TO STRIKE ALLEGATIONS OF CERTAIN AGGRAVATING CIRCUMSTANCES ALLEGED...DEFT'S MOTION TO STRIKE STATE'S NOTICE OF INTENT...DEFT'S MOTION TO COMPEL DISCLOSURE OF ANY AND ALL INFO RE: AGGRAVATING FACTORS...DEFT'S MOTION TO COMPEL PETROCELLI HEARING...STATE'S MOTION TO ADMIT EVIDENCE OF CRIMES, WRONGS OR BAD ACTS...STATE'S SUPPLEMENTAL MOTION: ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR BAD ACTS

Court advised he has read all the Points & Authorities in this case and is prepared to take oral argument. Mr. Brooks advised, as to the motions to admit evidence of other crimes, he would request they not be heard until after the Petrocelli hearing. COURT SO ORDERED. Ms. Silver advised she would really prefer the Court rule at this time. Court advised counsel of his inclinations on the motion and ORDERED, motion to compel Petrocelli hearing is GRANTED. Following arguments by counsel, Court stated his findings and ORDERED, motion to strike allegations of certain aggravating

CONTINUED ON PAGE: 008

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 007

circumstances is DENIED and Court believes there is substantial evidence to go to the Jury; motion to strike notice of intent is DENIED. As to the Motion to Compel Disclosure of Any and All Info Re: Aggravating Factors, Ms. Silver advised their office has an open file policy and she has given Mr. Brooks everything they have. Upon Court's inquiry, Mr. Brooks advised they will be finished copying the jury questionnaires today. Court advised counsel to get those to Jury Services as soon as possible. COURT ORDERED, Motion to Admit Evidence of Other Crimes, Wrongs or Bad Acts is set for the day of trial at 11:00 a.m. and jury selection will begin that afternoon.

## CUSTODY

10-7-96 11:00 AM STATE'S MOTION TO ADMIT EVIDENCE OF CRIMES, WRONGS OR BAD ACTS...STATE'S SUPPLEMENTAL MOTION: ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR BAD ACTS

10/02/96 09:00 AM 00 CALENDAR CALL

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: TINA HURD, Court Clerk  
PATSY SMITH, Reporter/Recorder

PARTIES: STATE OF NEVADA  
003813 Silver, Abbi  
0001 D1 Chappell, James M  
PUBDEF Public Defender  
003374 Brooks, Howard S.

Y  
Y  
Y  
Y  
Y

Counsel announced ready for trial. COURT ORDERED, the Petrocelli hearing will be at 11:00 a.m. Monday morning and will start jury selection at 1:00 p.m. that afternoon.

## CUSTODY

## CRIMINAL COURT MINUTES

95-C-131341-C

STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 008

10/07/96 11:00 AM 00 ALL PENDING MOTIONS 10-7-96

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: TINA HURD, Court Clerk  
PATSY SMITH, Reporter/Recorder

PARTIES: STATE OF NEVADA  
000862 Harmon, Melvyn T.  
003813 Silver, Abbi  
  
0001 D1 Chappell, James M  
PUBDEF Public Defender  
003374 Brooks, Howard S.  
003942 Ewing, Willard N.

Y  
Y  
Y  
  
Y  
Y  
Y  
Y

STATE'S SUPPLEMENTAL MOTION TO ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR BAD ACTS...STATE'S MOTION TO ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR BAD ACTS...DEFT'S MOTION IN LIMINE REGARDING EVENTS RELATED TO DEFT'S ARREST FOR SHOPLIFTING ON SEPTEMBER 1, 1995...DEFT'S MOTION IN LIMINE REGARDING DETAILS OF DEFT'S RELEASE FROM JAIL AND FACT THAT HE WAS ON PROBATION

Offer of proof made by Ms. Silver. Court's exhibits A-D offered and admitted per worksheet. Court inquired if the hearing is going to proceed with live testimony. Mr. Harmon advised they are making an offer of proof in lieu of testimony. Mr. Brooks advised his position is that the State has to present clear and convincing evidence by actual testimony and not by offer of proof. Argument by Mr. Brooks and advised deft. Chappell has offered a stipulation that he did kill the woman. Court advised the State has not accepted that stipulation at this time. Mr. Harmon advised this is all evidence of deft's motive and intent and it is their position that he intended to kill the victim when he was released from the County jail. Mr. Harmon advised they would accept deft's stipulation, but ask the Court to allow them to continue to offer the evidence as they have to convince the jury. Mr. Brooks objected and advised the pattern of domestic violence is highly inflammatory because it is character evidence. Further arguments by counsel. Court stated his findings and ORDERED, State's Motion and Supplemental Motion to Admit Evidence of Other Crimes, Wrongs or Bad Acts are GRANTED.

As to deft's motions, Mr. Harmon argued he believes the shoplifting is admissible as proof of motive and intent and as to deft's release from jail and that he was on probation, the Jury does not need to know that, however, they do need to know he was in custody as the State has letters that were written while deft. was in a custodial status; deft. was in jail for domestic violence. Court FINDS the fact that deft. was in custody and released is probative, however, why deft. was in custody does not need to be known and ORDERED, Deft's Motion in Limine Regarding Details of Deft's Release From Jail and Fact That He Was on Probation is GRANTED IN PART. Mr. Harmon advised the State will stipulate deft. was in custody for domestic

CONTINUED ON PAGE: 010

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 009

violence and that he was released in the morning of August 31, 1995, and was to report to law enforcement at 1:30 p.m. that date and did not report. Mr. Brooks advised he would like to think about that stipulation. Court advised he will allow that evidence in absence of a stipulation. Further argument by Mr. Brooks as to the motion in limine re the shoplifting charge. COURT ORDERED, RULING DEFERRED as to this motion. As to the stipulation currently on file, COURT ORDERED, the State may read that in their opening statement if they wish. Court advised we will start jury selection at 1:30 p.m. today and go to about 6:00 p.m. Court advised he has cleared his civil calendar tomorrow except for one matter. Colloquy between Court and counsel as to a starting time tomorrow. COURT ORDERED, this matter will proceed at 9:15 a.m. tomorrow morning. Court stated he has advised counsel there will be no proceedings for the next two Wednesdays. Counsel acknowledged.

CUSTODY

10/07/96 01:30 PM 00 TRIAL BY JURY

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: TINA HURD, Court Clerk  
PATSY SMITH / DANI ANTONACCI, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	000862 Harmon, Melvyn T.	Y
	003813 Silver, Abbi	Y
	0001 D1 Chappell, James M	Y
	PUBDEF Public Defender	Y
	003374 Brooks, Howard S.	Y
	003942 Ewing, Willard N.	Y

1:58 P.M.--PATSY SMITH, COURT REPORTER. Introductions by Court and counsel. Clerk called roll of prospective jurors 401-480. Voir dire oath administered. Preliminary instructions read by the Court. Jury selection proceeded.

2:35 P.M.--DANI ANTONACCI, COURT REPORTER. Jury selection continued. Jurors 481-550 waiting in Jury Services excused for the evening at 4:00 p.m. to return at 2:00 p.m. tomorrow afternoon. Jurors 445-480 admonished and excused for the evening at 5:08 p.m. to return at 8:30 a.m. tomorrow morning. 8 jurors seated for cause admonished and excused for the evening at 5:08 p.m. to return at 2:00 p.m. tomorrow afternoon. 6 jurors seated for cause admonished and excused for the evening at 5:53 p.m. to return at 2:00 p.m. tomorrow afternoon. 4 additional jurors seated for cause admonished and excused for the evening at 6:20 p.m. to return at 2:00 p.m. tomorrow afternoon. Court adjourned at 6:21 p.m.

CUSTODY

CONTINUED TO: 10/08/96 08:30 AM 01

CONTINUED ON PAGE: 011

PRINT DATE: 06/18/04

PAGE: 010

MINUTES DATE: 10/07/96

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 010

10/08/96 08:30 AM 01 TRIAL BY JURY

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: TINA HURD, Court Clerk  
 PATSY SMITH / LISA BRENSKE, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000862	Harmon, Melvyn T.	Y
003813	Silver, Abbi	Y
0001 D1	Chappell, James M	Y
PUBDEF	Public Defender	Y
003374	Brooks, Howard S.	Y
003942	Ewing, Willard N.	Y

8:42 A.M.--PATSY SMITH, COURT REPORTER. Jury selection continued. OUTSIDE THE PRESENCE OF THE JURY, Court stated immediately following the voir dire of Mr. Fittro, the Court inquired of defense counsel why they did not voir dire this juror as to the victim and deft. being of different ethnicity as he had indicated in his questionnaire that it may be a problem and Mr. Brooks advised that issue cuts both ways and he had made a tactical decision not to go into that further. Mr. Brooks concurred. Prospective jurors present and jury selection continued. 13 jurors qualified for cause admonished and excused for the lunch recess at 11:17 a.m. to return at 2:00 p.m. this afternoon.

2:14 P.M.--LISA BRENSKE, COURT REPORTER. Introductions by counsel. Clerk called roll of jurors 481-550; voir dire oath administered. Preliminary instructions read by the Court. Jury selection continued. 3:56 p.m.--36 prospective jurors qualified for cause. OUTSIDE THE PRESENCE OF THE JURY, alternate positions selected by lot. 4:20 p.m.--Court thanked and excused the excess jurors. Peremptory challenges exercised pursuant to the Arizona method. OUTSIDE THE PRESENCE OF THE JURY, Mr. Brooks objected to two of the State's peremptory challenges as they have kicked off the only two African-Americans on the panel. Mr. Harmon advised both prospective jurors were equivocal on the death penalty. Following arguments by counsel, Court stated he FINDS the reason for the challenges is race neutral. Whether minorities are being excused because of their stand on capital punishment and whether capital punishment is being given more often to minorities has not been reached by the Supreme Court and is a matter for future courts. COURT ORDERED, OBJECTIONS OVERRULED. 4:50 p.m.--Court advised the names of the jurors selected and thanked and excused the remaining prospective jurors. Court admonished the Jury and excused them for the evening at 5:02 p.m. to return at 10:00 a.m. Thursday morning. Court adjourned.

CUSTODY

CONTINUED TO: 10/10/96 10:00 AM 02



## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA vs Chappell, James M

CONTINUED FROM PAGE: 011

10/10/96 10:00 AM 02 TRIAL BY JURY

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: TINA HURD, Court Clerk  
PATSY SMITH / MARCIA LEONARD, Reporter/Recorder

PARTIES:	STATE OF NEVADA	N
000862	Harmon, Melvyn T.	Y
003813	Silver, Abbi	Y
0001 D1	Chappell, James M	Y
PUBDEF	Public Defender	Y
003374	Brooks, Howard S.	Y
003942	Ewing, Willard N.	Y

10:19 A.M.--PATSY SMITH, COURT REPORTER. OUTSIDE THE PRESENCE OF THE JURY, Mr. Brooks advised the Court has made certain rulings, but he would still have an objection and requested a continuing objection. COURT SO ORDERED. Mr. Brooks advised, as a matter of trial tactics, they will be taking a course that will contest and oppose prior bad acts evidence, however, they are not going to contest that these acts occurred. Mr. Harmon advised defense counsel offered to stipulate on the record earlier to certain things and they have prepared a formal Stipulation and requested same be filed in open court. Stipulation to Certain Facts FILED IN OPEN COURT. 10:24 a.m.--Jury present. Court read pre-trial instructions to the Jury. Information read by the Clerk. Opening statements by counsel. Jury admonished and excused for lunch at 11:51 a.m. to reconvene at 1:30 p.m. OUTSIDE THE PRESENCE OF THE JURY, Mr. Brooks advised during opening statements Ms. Silver argued facts to the Jury which have not been admitted into evidence and moved for a mistrial. COURT ORDERED, motion DENIED. Court adjourned at 11:53 a.m. 1:42 p.m.--Counsel stipulated to the presence of the Jury. Testimony and exhibits presented. (See worksheets.)

2:29 P.M.--MARCIA LEONARD, COURT REPORTER. Further testimony and exhibits. Court admonished the Jury and excused them for the evening at 5:43 p.m. to return at 9:15 a.m. tomorrow morning.

CUSTODY

CONTINUED TO: 10/11/96 09:15 AM 03

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 012

10/11/96 09:15 AM 03 TRIAL BY JURY

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: TINA HURD, Court Clerk  
PATSY SMITH / MARCIA LEONARD, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000862	Harmon, Melvyn T.	Y
003813	Silver, Abbi	Y
0001 D1	Chappell, James M	Y
PUBDEF	Public Defender	Y
003374	Brooks, Howard S.	Y
003942	Ewing, Willard N.	Y

9:37 A.M.--PATSY SMITH, COURT REPORTER. Deft's Motion to Dismiss All Charges Based on the State's Violation of the Equal Protection Clause of the Fourteenth Amendment FILED IN OPEN COURT. Mr. Brooks argued the State's charging practices are biased and they are seeking the death penalty in this case where a black killed a white, however, in two other cases he has, one where a white man killed a white man and another where a Thai killed a Thai, no death penalty was sought and the fact patterns are almost identical. Ms. Silver advised she recently prosecuted a case where a black man killed a black woman and the death penalty was sought and obtained. The District Attorney's office has a panel that decides which are death cases; the decision is not made unilaterally by one person. Arguments by counsel as to African/Americans that were excused or challenged off the Jury. Court stated he feels the current practice of selecting jurors is about as race neutral as it can be, it is based on persons who have driver's licenses. Court advised there is no question in this case that the victim is Caucasian and the deft. is African/American, however, at this point there is insufficient foundation and ORDERED, motion DENIED. 10:05 a.m.--Counsel stipulated to the presence of the Jury. Further testimony and exhibits presented per worksheets. 10:43 a.m.--OUTSIDE THE PRESENCE OF THE JURY, Mr. Harmon advised his next three witnesses will relate to the detention of the deft. at a Lucky's Food Store on September 1, 1995, in the early afternoon and made an offer of proof. Argument in opposition by Mr. Brooks. Court stated his findings and ORDERED, this testimony will be ALLOWED. Mr. Brooks requested a continuing objection as to anything reference the shoplifting. COURT SO ORDERED and advised Mr. Brooks need not object in front of the Jury. 11:02 a.m.--Counsel stipulated to the presence of the Jury. Further testimony and exhibits presented. Jury admonished and excused for the lunch recess at 11:55 a.m. OUTSIDE THE PRESENCE OF THE JURY, Court advised, as to the evidence of shoplifting, one of the defense theories is this was a crime committed in the heat of passion and the shoplifting evidence is evidence that deft. felt no remorse and went on with the everyday activities of his life. Court adjourned at 11:57 a.m.

1:45 P.M.--MARCIA LEONARD, COURT REPORTER. Counsel stipulated to the

CONTINUED ON PAGE: 014

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 013

presence of the Jury. Further testimony and exhibits presented. 2:20 p.m.-- COURT ORDERED, the minutes of this Court will reflect this Court's pride and affection for Ms. Jennifer Newton-Taylor, Mr. Bryan Sims and Ms. Madeline Diekmann all of whom have served as this Court's law clerks here in Department VII of the Eighth Judicial District and all of whom received notice of their passing grades on the Nevada Bar Exam this 11th day of October 1996. Further testimony and exhibits presented. 3:08 p.m.--OUTSIDE THE PRESENCE OF THE JURY, COURT ORDERED, the record will reflect deft. does have shoes and socks on, though when one of the witnesses was describing him he had his shoes off. Further, Court stated his findings as to the state-of-mind exception to hearsay and requested the State prepare the appropriate limiting instruction. Mr. Brooks stated his position is the state of mind of the victim is not relevant. COURT ORDERED, Mr. Brooks will be allowed a continuing objection. 3:42 p.m.--Counsel stipulated to the presence of the Jury. Further testimony and exhibits presented. Mr. Harmon stated, as the Court is well aware, counsel have entered into certain stipulations and would like to make the Jury aware of those at this time. COURT ORDERED, counsel may read the stipulation into the record as part of their case-in-chief. Mr. Harmon advised the Jury as to deft's times in jail for domestic violence and that, as to exhibits 69-73, counsel have stipulated that the handwriting on those papers is NOT that of deft., but that the ones signed "James" or "James Chappell" are in deft's handwriting. Mr. Harmon read a written stipulation into the record. COURT ORDERED, Court officially accepts all stipulations recited and the Jury is advised they are evidence in this case. Further testimony and exhibits presented. Court admonished the Jury and excused them for the weekend at 5:02 p.m. to return at 10:30 a.m. Monday morning.

CUSTODY

CONTINUED TO: 10/14/96 11:00 AM 04

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 014

10/14/96 11:00 AM 04 TRIAL BY JURY

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: TINA HURD, Court Clerk  
PATSY SMITH / LISA BRENSKE, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000862	Harmon, Melvyn T.	Y
003813	Silver, Abbi	Y
0001 D1	Chappell, James M	Y
PUBDEF	Public Defender	Y
003374	Brooks, Howard S.	Y
003942	Ewing, Willard N.	Y

11:30 A.M.--PATSY SMITH, COURT REPORTER. OUTSIDE THE PRESENCE OF THE JURY, Mr. Harmon advised of problems with their Cellmark witnesses and moved to endorse Thomas Wahl from LVMPD who is familiar with Cellmark's work. No objection by Mr. Brooks. COURT ORDERED, motion GRANTED. Order signed in open court. Motion to Endorse Names on Information and Order FILED IN OPEN COURT. 11:37 a.m.--Counsel stipulated to the presence of the Jury. Further testimony and exhibits presented per worksheets. Jury admonished and excused for the lunch recess at 12:03 p.m. 1:45 p.m.--Counsel stipulated to the presence of the Jury. Further testimony and exhibits. State rested at 2:35 p.m.

2:37 P.M.--LISA BRENSKE, COURT REPORTER. OUTSIDE THE PRESENCE OF THE JURY, Deft. Chappell advised of his right to testify or not testify. 2:42 p.m.--Counsel stipulated to the presence of the Jury. Further testimony and exhibits presented. Court admonished the Jury and excused them for the evening at 6:10 p.m. to return at 10:00 a.m. tomorrow morning. Off the record at 6:11 p.m.

CUSTODY

CONTINUED TO: 10/15/96 10:00 AM 05

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA vs Chappell, James M

CONTINUED FROM PAGE: 015

10/15/96 10:00 AM 05 TRIAL BY JURY

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: TINA HURD, Court Clerk  
CYNTHIA NAVARETTE-LORY, Relief Clerk  
PATSY SMITH, Reporter/Recorder

PARTIES: STATE OF NEVADA  
000862 Harmon, Melvyn T.  
003813 Silver, Abbi  
  
0001 D1 Chappell, James M  
PUBDEF Public Defender  
003374 Brooks, Howard S.  
003942 Ewing, Willard N.

Y  
Y  
Y  
Y  
Y  
Y  
Y

10:39 A.M.--TINA HURD, COURT CLERK. Counsel stipulated to the presence of the Jury. Testimony by Dr. Louis Etcoff presented. Defense rested. No rebuttal by the State. Court admonished the Jury and excused them for the lunch recess at 12:26 p.m. to return at 2:15 p.m. Court directed counsel to return at 1:45 p.m. to settle instructions.

2:05 P.M.--Instructions settled on the record in chambers OUTSIDE THE PRESENCE OF THE JURY. 2:30 p.m.--Counsel stipulated to the presence of the Jury. Court instructed the Jury. Closing arguments by Mr. Harmon and Mr. Brooks.

4:55 P.M.--CYNTHIA NAVARETTE-LORY, COURT CLERK. Closing argument by Ms. Silver. Juror #5-Wells advised both of her children have been tested by Dr. Etcoff. Juror canvassed by the Court. Court FINDS there is no reason Ms. Wells cannot sit on the Jury. At the hour of 6:02 p.m. this date, Jury retired to deliberate.

7:00 P.M.--Jury admonished and excused for the evening at 7:00 p.m. to return at 8:30 a.m. tomorrow morning to continue deliberations.

CUSTODY

CONTINUED TO: 10/16/96 08:30 AM 06

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 016

10/16/96 08:30 AM 06 TRIAL BY JURY

HEARD BY: Lee A Gates, Judge; Dept. 8

OFFICERS: TINA HURD, Court Clerk  
PATSY SMITH, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	000862 Harmon, Melvyn T.	Y
	0001 D1 Chappell, James M	Y
	PUBDEF Public Defender	Y
	003374 Brooks, Howard S.	Y
	003942 Ewing, Willard N.	Y

Jury retired to continue deliberations at 8:30 a.m. this date.

At the hour of 3:35 p.m. this date, Jury returned with VERDICTS of: GUILTY OF COUNT I - BURGLARY (F), GUILTY OF COUNT II - ROBBERY WITH USE OF A DEADLY WEAPON (F) and GUILTY OF COUNT III - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON (F). Jury polled at the request of the Court. COURT ORDERED, matter set for penalty hearing. Court admonished the Jury and excused them for the day at 3:39 p.m. to return at 11:00 a.m. Monday morning for the penalty hearing. COURT FURTHER ORDERED, deft. CHAPPELL REMANDED TO CUSTODY TO BE HELD WITHOUT BAIL.

CUSTODY

10-21-96 11:00 AM PENALTY HEARING

10/21/96 11:00 AM 00 PENALTY HEARING

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: TINA HURD, Court Clerk  
PATSY SMITH / CONNIE MCCARTHY, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	000862 Harmon, Melvyn T.	Y
	003813 Silver, Abbi	Y
	0001 D1 Chappell, James M	Y
	PUBDEF Public Defender	Y
	003374 Brooks, Howard S.	Y
	003942 Ewing, Willard N.	Y

11:11 A.M.--PATSY SMITH, COURT REPORTER. Mr. Ewing advised he wishes to make one motion prior to the Jury coming in. Mr. Ewing stated he understands the State is going to have more hearsay testimony and he would

CONTINUED ON PAGE: 018

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 017

like a continuing objection. Court advised the hearsay testimony is admissible in the penalty hearing, however, counsel may have their continuing objection. 11:13 a.m.--Counsel stipulated to the presence of the Jury. Opening statements by counsel. Testimony and exhibits presented. (See worksheets.)

2:33 P.M.--CONNIE MCCARTHY, COURT REPORTER. Further testimony and exhibits presented. Court admonished the Jury and excused them for the evening at 5:11 p.m. to return at 10:00 a.m. tomorrow morning. OUTSIDE THE PRESENCE OF THE JURY, Juror #3-Gritis present and admonished to make every effort to be here on time. Juror Gritis excused for the evening. Mr. Brooks moved to strike the testimony of Lisa Duran and Mike Pollard and moved for a mistrial of the guilt phase based on the State's willful failure to present conflicting evidence. Mr. Brooks advised his position is that Pollard's testimony was essential at the Petrocelli hearing as it brings Duran's credibility into question and the State had a duty to have Pollard testify during the guilt phase. Mr. Harmon stated he believes they are at liberty to engage in certain trial tactics; Mike Pollard was not a mystery to anyone at the preliminary hearing as Lisa Duran referred to him. Further, Pollard was listed as a potential witness on the Information and the defense had the same opportunity to interview him as anyone else. Mr. Harmon advised Pollard was originally on their list of witnesses to be served and was not contacted for some reason prior to the guilt phase. Mr. Harmon advised they did not formally interview Mike Pollard until after the guilt phase. Mr. Harmon argued, just because one witness contradicts another, their testimony is not vulnerable to a motion to strike. Court stated he believes that Brady does not compel the State to put on consistent testimony and, in this case, the time frames described by witnesses are inexact and the Jury has been allowed to decide this case based on the evidence before it. This witness was mentioned at the preliminary hearing and his name was endorsed on the Information and defense counsel could have interviewed him. Based on the totality of the evidence, this does not create an ineffective assistance of counsel. COURT ORDERED, motion DENIED.

CUSTODY

CONTINUED TO: 10/22/96 10:00 AM 01

## CRIMINAL COURT MINUTES

95-C-131341-C

STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 018

10/22/96 10:00 AM 01 PENALTY HEARING

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: TINA HURD, Court Clerk  
PATSY SMITH, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	000862 Harmon, Melvyn T.	Y
	003813 Silver, Abbi	Y
	0001 D1 Chappell, James M	Y
	PUBDEF Public Defender	Y
	003374 Brooks, Howard S.	Y
	003942 Ewing, Willard N.	Y

10:43 A.M.--OUTSIDE THE PRESENCE OF THE JURY, Mr. Brooks advised deft. has asked if they can get exhibit 66 and make a color copy of it over the lunch hour and bring it back. No objection by the State. COURT ORDERED, GRANTED.

10:45 a.m.--Counsel stipulated to the presence of the Jury. Further testimony and exhibits presented per worksheets. 11:19 a.m.--State rested.

OUTSIDE THE PRESENCE OF THE JURY, Court advised deft. of his right to testify or not testify and his right to allocution. Mr. Ewing moved for a mistrial based on the State's misuse of the penalty hearing process as the State did not discuss aggravators and presented character evidence. Further arguments by counsel. Court stated, in his view, the State managed to put on their case and convince the Jury of First Degree Murder without evidence that does not enjoin the protection of the hearsay rule during trial. Court stated he is confident the evidence thus far has been acceptable with the standards for a penalty hearing and ORDERED, motion DENIED. 11:29 a.m.--Counsel stipulated to the presence of the Jury. Testimony of William Moore presented. Jury admonished and excused for lunch at 11:57 a.m. Per the Court's order, exhibit 66 released to Mr. Brooks.

2:02 P.M.--Counsel stipulated to the presence of the Jury. Further testimony and exhibits presented. Statement in allocution made by deft.

2:15 p.m.--Defense rested. State advised they have no rebuttal. OUTSIDE THE PRESENCE OF THE JURY, conference at the bench. Instructions settled on the record. 2:35 p.m.--Counsel stipulated to the presence of the Jury. Court instructed the Jury. Closing arguments by Ms. Silver and Mr. Brooks. Court advised the closing arguments of defense counsel will be split and Mr. Ewing will be heard tomorrow, as well as Mr. Harmon. Court admonished the Jury and excused them for the evening at 4:26 p.m. to return at 11:00 a.m. tomorrow morning. OUTSIDE THE PRESENCE OF THE JURY, Mr. Ewing moved for a mistrial based on statements by Ms. Silver in closing arguments as prosecutorial misconduct as she told jurors deft. was judge, jury and executioner of the victim and asked the Jury to show the same mercy to deft. he showed to the victim. Mr. Harmon argued they are entitled to fervently argue their position and are given broad latitude. Mr. Harmon argued it was simply a rhetorical approach and has been used many times. Mr. Ewing

CONTINUED ON PAGE: 020



## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 019

advised he can submit Points & Authorities. Court advised he will allow Mr. Ewing to do that, however, the Court will make his ruling at this time. Court stated the line between proper and improper advocacy can be hard to discern and, because of the nature of this case, the Court believes it is proper rhetoric and ORDERED, motion for mistrial DENIED. Court adjourned at 4:30 p.m.

CLERK'S NOTE: Exhibit 66 returned to the Clerk after the lunch hour. th  
CUSTODY

CONTINUED TO: 10/23/96 11:00 AM 02

10/23/96 11:00 AM 02 PENALTY HEARING

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: TINA HURD, Court Clerk  
PATSY SMITH, Reporter/Recorder

PARTIES: STATE OF NEVADA  
000862 Harmon, Melvyn T.  
003813 Silver, Abbi  
  
0001 D1 Chappell, James M  
PUBDEF Public Defender  
003374 Brooks, Howard S.  
003942 Ewing, Willard N.

Y  
Y  
Y  
  
Y  
Y  
Y  
Y

11:25 A.M.--Counsel stipulated to the presence of the Jury. COURT ORDERED, Juror #1-Ms. Lucido has been excused from jury service as the Court received notice this morning that she sustained a death in her family and wishes to go to the Phillipines to attend the funeral. Counsel concurred in the Court's ruling. Closing arguments by Mr. Ewing and Mr. Harmon. At the hour of 1:23 p.m. this date, Jury retired to deliberate. OUTSIDE THE PRESENCE OF THE JURY, Mr. Ewing submitted Points & Authorities as to his objection yesterday that the Court has already ruled on. Court reviewed the document and stated he believes that each incident of misconduct in the arguments has to be individually considered and FINDS the case cited, Lesko vs Lehman, is distinguishable from this case, however, the Court will make the document part of the record.

Jury admonished and excused for the evening at 5:55 p.m. to return at 9:00 a.m. tomorrow morning to continue deliberations.

CUSTODY

CONTINUED TO: 10/24/96 08:45 AM 03

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 020

10/24/96 08:45 AM 03 PENALTY HEARING

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: TINA HURD, Court Clerk  
PATSY SMITH, Reporter/Recorder

PARTIES: STATE OF NEVADA  
000862 Harmon, Melvyn T.  
003813 Silver, Abbi  
  
0001 D1 Chappell, James M  
PUBDEF Public Defender  
003374 Brooks, Howard S.

Y  
Y  
Y  
  
Y  
Y  
Y

At the hour of 9:00 a.m. this date, Jury retired to continue deliberations.

10:13 A.M.--In chambers, OUTSIDE THE PRESENCE OF THE JURY. Deft's presence waived. Court advised the Jury has presented a written question and read same into the record. Court advised the parties have agreed the Court may read to the Jury a supplemental instruction and leave it with the Jury. Court read Supplemental Instruction #1 into the record and advised he will read it to the Jury off the record and leave it with them. 10:32 a.m.-- Court read the supplemental instruction to the Jury and alternates in the jury room, off the record. Jury continued deliberations.

2:27 P.M.--Counsel stipulated to the presence of the Jury. Court read the verdict and special verdicts into the record. At the hour of 2:27 p.m. this date, Jury returned with a VERDICT OF DEATH. Jury polled at the request of Mr. Brooks. Court thanked and excused the Jury at 2:34 p.m. COURT ORDERED, matter set for sentencing.

CUSTODY

12-11-96 9:00 AM SENTENCING

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 021

12/11/96 09:00 AM 00 SENTENCING

HEARD BY: Michael P Gibbons, Visiting Judge; Dept. MGIB

OFFICERS: TINA HURD, Court Clerk  
PATSY SMITH, Reporter/RecorderPARTIES: STATE OF NEVADA  
003813 Silver, Abbi  
0001 D1 Chappell, James M  
PUBDEF Public Defender  
003374 Brooks, Howard S.Y  
Y  
Y  
Y  
Y

Robert Lawson of the Division of Parole & Probation present. State advised she spoke with the Court's secretary and did bring down witnesses, however, after conferring with the victim's family, she would request sentencing be continued for Judge Maupin to hear. Mr. Brooks moved sentencing go forward today. COURT ORDERED, matter CONTINUED to December 30.

CUSTODY

CONTINUED TO: 12/30/96 09:00 AM 01

12/30/96 09:00 AM 01 SENTENCING

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: TINA HURD, Court Clerk  
PATSY SMITH, Reporter/Recorder

PARTIES: STATE OF NEVADA

Y

Elaine Lowrey of the Division of Parole & Probation present. DEFT. CHAPPELL ADJUDGED GUILTY OF COUNT I - BURGLARY (F), COUNT II - ROBBERY WITH USE OF A DEADLY WEAPON (F) AND COUNT III - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON (F). Statements in mitigation of sentencing. COURT ORDERED, in addition to the \$25.00 Administrative Assessment Fee, deft. is SENTENCED to a MAXIMUM term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of FORTY EIGHT (48) MONTHS in the Nevada Department of Prisons for Count I, and is SENTENCED to a MAXIMUM term of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of SEVENTY TWO (72) MONTHS in the Nevada Department of Prisons plus an EQUAL AND CONSECUTIVE MAXIMUM term of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of SEVENTY TWO (72) MONTHS in the Nevada Department of Prisons for the use of a deadly weapon for Count II, to be served CONSECUTIVELY to Count I and deft. is SENTENCED to DEATH for Count III, to be served CONSECUTIVELY to Counts I and II. Deft. to receive 192 DAYS Credit for Time Served and is to PAY STATUTORY RESTITUTION. BOND EXONERATED, if any. Stay of execution signed

CONTINUED ON PAGE: 023

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 022

in open court.

NDP

11/08/99 09:00 AM 00 STATE'S MOTION TO APPOINT COUNSEL FOR  
CAPITAL MURDER DEFT TO HELP VL 11-12-99

HEARD BY: Mark Gibbons, Chief Judge

OFFICERS: TINA HURD, Court Clerk  
JOSEPHINE BOHN/jb, Relief Clerk  
RENEE SILVAGGIO, Reporter/Recorder

PARTIES: STATE OF NEVADA  
003801 Robinson, Lynn M.

Y  
Y

Court stated there is a conflict with the Special Public Defender's office and attempts to reach Jonelle Thomas for appointment has been unsuccessful. Court stated it would continue to try to contact Ms. Thomas and ORDERED, matter CONTINUED.

NDP

CONTINUED TO: 11/16/99 09:00 AM 01

11/15/99 09:00 AM 00 STATE'S MOTION TO APPOINT COUNSEL FOR  
CAPITAL MURDER DEFT TO HELP PREPARE SUPP

HEARD BY: Mark Gibbons, Chief Judge

OFFICERS: JOSEPHINE BOHN, Court Clerk  
PATSY SMITH, Reporter/Recorder

PARTIES: STATE OF NEVADA  
000102 Bowman, Clinton D.  
0001 D1 Chappell, James M  
000824 Schieck, David M.  
PUBDEF Public Defender  
003374 Brooks, Howard S.

Y  
Y  
N  
Y  
Y  
Y

COURT ORDERED, motion GRANTED; DAVID SCHIECK APPOINTED and CONFIRMED AS COUNSEL OF RECORD. FURTHER ORDERED, Public Defender to include work product in file released to Mr. Schieck. Mr. Schieck requested a status check in 30 days and, COURT SO ORDERED.

NDP

CONTINUED ON PAGE: 024

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 023

12/15/99 9:00 AM STATUS CHECK

12/15/99 09:00 AM 00 STATUS CHECK

HEARD BY: Mark Gibbons, Chief Judge

OFFICERS: TINA HURD, Court Clerk  
PATSY SMITH, Reporter/RecorderPARTIES: STATE OF NEVADA  
005927 De La Garza, Melisa  
0001 D1 Chappell, James M  
004349 Oram, Christopher R.Y  
Y  
N  
Y

Mr. Oram advised Mr. Schieck has received a great deal of the file from Mr. Brooks and requested another 30 days. No objection by the State. COURT ORDERED, matter CONTINUED.

NDP

CONTINUED TO: 01/19/00 09:00 AM 01

01/19/00 09:00 AM 01 STATUS CHECK

HEARD BY: Mark Gibbons, Chief Judge

OFFICERS: TINA HURD, Court Clerk  
AMBER FARLEY/AF, Relief Clerk  
RENEE SILVAGGIO, Reporter/RecorderPARTIES: STATE OF NEVADA  
006088 Peterson, Clark A.  
0001 D1 Chappell, James M  
000824 Schieck, David M.Y  
Y  
N  
Y

Mr. Schieck stated he has received the files from Mr. Brooks and requested thirty days and a briefing schedule. COURT SO ORDERED; briefing schedule set as follows:

4/19/00 Defendant's brief due  
5/19/00 State's response due  
6/12/00 Defendant's reply due

and matter set for hearing.

NDP

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 024

6/27/00 9:00 AM HEARING

06/27/00 09:00 AM 00 HEARING: WRIT (VJ 5/1/01)

HEARD BY: Mark Gibbons, Chief Judge

OFFICERS: AMBER FARLEY/AF, Court Clerk  
GREER JENNISON, Relief Clerk  
PATSY SMITH, Reporter/Recorder

PARTIES: STATE OF NEVADA  
000677 Hawley, Lawrence E.  
006056 Bauer, Elizabeth B.  
  
0001 D1 Chappell, James M  
000824 Schieck, David M.

Y  
Y  
Y  
  
N  
Y

Court stated it hasn't received any briefs on this matter. Mr. Schieck advised the Court he has been involved in two capital cases in the past couple of months and hasn't had time to communicate with Defendant nor prepare the breifs; requested a continuance. COURT ORDERED, matter CONTINUED; briefing schedule set as follows:

Opening due by 8/28/00  
Response due by 9/25/00  
Reply due by 10/30/00

and hearing on the Writ CONTINUED.

NDP

CONTINUED TO: 11/06/00 10:30 AM 01

11/06/00 10:30 AM 01 HEARING: WRIT (VJ 5/1/01)

HEARD BY: Mark Gibbons, Chief Judge

OFFICERS: Amber Farley, Court Clerk  
Renee Silvaggio, Reporter/Recorder

PARTIES: STATE OF NEVADA  
003801 Robinson, Lynn M.  
  
0001 D1 Chappell, James M  
000824 Schieck, David M.

Y  
Y  
  
N  
Y

Mr. Schieck requested the briefing schedule be reset and advised he is ready to file his motion, but needs to go to Ely to have the Defendant sign it. COURT ORDERED, briefing schedule reset as follows:

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 025

OPENING due by Dec. 4, 2000  
RESPONSE due by Jan. 8, 2001  
REPLY due by Feb. 5, 2001

Hearing date CONTINUED.

NDP

CONTINUED TO: 02/12/01 10:30 AM 02

02/12/01 10:30 AM 02 HEARING: WRIT (VJ 5/1/01)

HEARD BY: Kathy Hardcastle, Chief Judge; Dept. 4

OFFICERS: JENNIFER LOTT, Relief Clerk  
TINA SMITH, Reporter/Recorder

PARTIES: STATE OF NEVADA  
005144 Sweetin, James R.  
0001 D1 Chappell, James M  
000824 Schieck, David M.

N  
YN  
Y

Mr. Schieck requested a 30 day continuance to submit supplemental points and authorities. Additional witnesses were named by defendant. COURT ORDERED, supplemental brief TO BE FILED by 3/13/01; response TO BE FILED by 4/27/01; reply TO BE FILED by 5/15/01; matter CONTINUED for argument.

NDP

CLERK'S NOTE: Dates of response and argument were MOVED as they were not scheduled on judicial court days.

CLERK'S NOTE: A copy of this Minute Order to be placed in the attorney folders of Mr. Sweetin and Mr. Schieck.

CONTINUED TO: 05/24/01 10:30 AM 03

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA vs Chappell, James M

CONTINUED FROM PAGE: 026

05/01/01 09:00 AM 00 STATE'S MOTION TO PLACE ON CALENDAR

HEARD BY: Mark Gibbons, Chief Judge

OFFICERS: AMBER FARLEY/AF, Court Clerk  
APRIL WATKINS, Relief Clerk  
RENEE SILVAGGIO, Reporter/Recorder

PARTIES: STATE OF NEVADA  
004739 Rutledge, Brian S.  
0001 D1 Chappell, James M  
000824 Schieck, David M.

Y  
Y  
N  
Y

Counsel appeared prior to calendar and requested matter be set on 6/12 for a status check.

Mr. Sweetin, DDA, present when case called. Mr. Schieck stated the Writ is prepared but not filed, and he needs to go to Ely to have the Defendant sign the verified copy. Mr. Schieck requested the matter set for a status check on 6/12. COURT SO ORDERED; 5/24/01 hearing date VACATED.

NDP

6/12/01 9:00 AM STATUS CHECK: BRIEFING SCHEDULE

06/12/01 09:00 AM 00 STATUS CHECK: BRIEFING SCHEDULE

HEARD BY: Mark Gibbons, Chief Judge

OFFICERS: TINA HURD, Court Clerk  
PATSY SMITH, Reporter/Recorder

PARTIES: STATE OF NEVADA  
000411 Simon, H. L.  
0001 D1 Chappell, James M  
000824 Schieck, David M.

Y  
Y  
N  
Y

Mr. Schieck advised he needs another 30 days as he could not get the document executed and advised he has had problems with the Prison on another case where they would not let him see his client. COURT ORDERED, matter CONTINUED.

NDP

CONTINUED TO: 07/17/01 09:00 AM 01



## CRIMINAL COURT MINUTES

95-C-131341-C      STATE OF NEVADA      vs Chappell, James M

CONTINUED FROM PAGE: 027

07/17/01    09:00 AM    01    STATUS CHECK:    BRIEFING SCHEDULE

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: JOYCE BROWN, Court Clerk  
KRISTEN BROWN/kb, Relief Clerk  
CAT NELSON, Reporter/Recorder

PARTIES:                    STATE OF NEVADA  
                             005144    Sweetin, James R.

Y  
Y

COURT ORRDERED, matter CONTINUED for Mr. Schiek's presence.

NDC

CONTINUED TO:    07/19/01    09:00 AM    02

07/19/01    09:00 AM    02    STATUS CHECK:    BRIEFING SCHEDULE

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: AMBER FARLEY, Court Clerk  
Cat Nelson, Reporter/Recorder

PARTIES:                    STATE OF NEVADA  
                             005927    De La Garza, Melisa

Y  
Y

0001 D1    Chappell, James M  
004349    Oram, Christopher R.

N  
Y

Mr. Oram requested matter be continued for Mr. Schieck's presence. COURT SO ORDERED.

NDC

CONTINUED TO:    07/26/01    09:00 AM    03

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA vs Chappell, James M

CONTINUED FROM PAGE: 028

07/26/01 09:00 AM 03 STATUS CHECK: BRIEFING SCHEDULE

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Joyce Brown, Court Clerk  
Cat Nelson, Reporter/Recorder

PARTIES: STATE OF NEVADA  
007409 Kosewicz, Cheryl L.  
0001 D1 Chappell, James M  
000824 Schieck, David M.

Y

Y

N

Y

Mr. Schieck advised this was a capital case; he had four other cases and asked for a status check in September. COURT ORDERED matter CONTINUED to September 13th.

NDC

CONTINUED TO: 09/13/01 09:00 AM 04

09/13/01 09:00 AM 04 STATUS CHECK: BRIEFING SCHEDULE

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: AMBER FARLEY/AF, Court Clerk  
KEITH REED, Relief Clerk  
Cat Nelson, Reporter/Recorder

PARTIES: STATE OF NEVADA  
006612 Cram, Roger  
0001 D1 Chappell, James M  
000824 Schieck, David M.

Y

Y

N

Y

Mr. Schieck stated he needs an additional forty-five days to file the full supplemental, as he needs to travel to Ely. Mr. Cram noted the State's objection, as this matter has been continuing since 1999. MATTER CONTINUED.

NDC

CONTINUED TO: 11/01/01 09:00 AM 05

CONTINUED ON PAGE: 030

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 029

11/01/01 09:00 AM 05 STATUS CHECK: BRIEFING SCHEDULE

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Joyce Brown/jb, Court Clerk  
Denise Husted, Relief Clerk  
Cat Nelson, Reporter/RecorderPARTIES: STATE OF NEVADA  
006316 Goettsch, Becky S.  
0001 D1 Chappell, James M  
000824 Schieck, David M.Y  
Y  
N  
Y

Mr. Schieck advised he still had not filed a supplemental and he had not been to Ely. COURT ORDERED matter CONTINUED.

NDC

CKERK'S NOTE: The date given in Court was for a Saturday; it was changed to December 13; Mr. Schieck and Ms. Goettsch notified of the date change.  
11-01-01/JB

CONTINUED TO: 12/13/01 09:00 AM 06

12/13/01 09:00 AM 06 STATUS CHECK: BRIEFING SCHEDULE

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Joyce Brown/jb, Court Clerk  
Cheryl Case, Relief Clerk  
Carrie Hansen, Reporter/RecorderPARTIES: STATE OF NEVADA  
006316 Goettsch, Becky S.  
0001 D1 Chappell, James M  
000824 Schieck, David M.Y  
Y  
N  
Y

Mr. Schieck advised he was trying to catch up after being in trials and would like more time. COURT ORDERED matter CONTINUED.

NDC

CONTINUED TO: 02/05/02 09:00 AM 07

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA vs Chappell, James M

CONTINUED FROM PAGE: 030

02/05/02 09:00 AM 07 STATUS CHECK: BRIEFING SCHEDULE

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Joyce Brown, Court Clerk  
Cat Nelson, Reporter/RecorderPARTIES: STATE OF NEVADA  
002805 Wall, David T.  
0001 D1 Chappell, James M  
000824 Schieck, David M.Y  
Y  
N  
Y

Mr. Schieck advised he needed another thirty days on the petition and he still had not been to Ely. COURT ORDERED matter CONTINUED as requested.

NDC

CONTINUED TO: 03/05/02 09:00 AM 08

03/05/02 09:00 AM 08 STATUS CHECK: BRIEFING SCHEDULE

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Amber Farley, Relief Clerk  
Cat Nelson, Reporter/RecorderPARTIES: STATE OF NEVADA  
002805 Wall, David T.  
0001 D1 Chappell, James M  
000824 Schieck, David M.Y  
Y  
N  
Y

Mr. Schieck stated he has the supplement ready, and needs to go to Ely to have the Defendant sign it. Mr. Schieck requested an additional three weeks. COURT ORDERED, matter CONTINUED.

NDC

CONTINUED TO: 03/26/02 09:00 AM 09

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA vs Chappell, James M

CONTINUED FROM PAGE: 031

03/26/02 09:00 AM 09 STATUS CHECK: BRIEFING SCHEDULE

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Nora Pena, Court Clerk  
Cat Nelson, Reporter/Recorder

PARTIES: STATE OF NEVADA  
006029 Lawson, Tamara F.  
0001 D1 Chappell, James M  
000824 Schieck, David M.

Y  
Y  
N  
Y

Mr. Schieck advised he was able to visit Ely and continue the trial in District Court 14 to January; he further requested 2 weeks to prepare. COURT ORDERED, matter CONTINUED.

NDC

CONTINUED TO: 04/09/02 09:00 AM 10

04/09/02 09:00 AM 10 STATUS CHECK: BRIEFING SCHEDULE

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Nora Pena, Court Clerk  
Cat Nelson, Reporter/Recorder

PARTIES: STATE OF NEVADA  
007409 Kosewicz, Cheryl L.  
0001 D1 Chappell, James M  
000824 Schieck, David M.

Y  
Y  
N  
Y

Mr. Schieck stated he had an emergency and he didn't get to Ely but he is scheduled to be there next week and requested a continuance. COURT ORDERED, matter CONTINUED.

NDC

CONTINUED TO: 04/18/02 09:00 AM 11

## CRIMINAL COURT MINUTES

95-C-131341-C      STATE OF NEVADA      vs Chappell, James M  
CONTINUED FROM PAGE: 032

04/18/02 09:00 AM 11 STATUS CHECK: BRIEFING SCHEDULE

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Nora Pena, Court Clerk  
Cat Nelson, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	005691 Kochevar, Brian J.	Y
	0001 D1 Chappell, James M	N
	000824 Schieck, David M.	Y

Mr. Schieck advised he has his supplement to Points and Authorities to be filed and he went to Ely but the deft. refused to visit so he will mail the paperwork to him and requested to set 60 days for the State to respond. Mr. Kochevar stated he will prepare the response. COURT ORDERED, Briefing schedule as follows: State to file response on 6/20/02, Defense to reply on 7/10/02 and matter set for Hearing.

NDC

7/22/02 9:00 AM HEARING: WRIT

07/25/02 09:00 AM 01 HEARING: WRIT

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Nora Pena, Court Clerk  
Jennifer Lott/jl, Relief Clerk  
Cat Nelson, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	003801 Robinson, Lynn M.	Y
	0001 D1 Chappell, James M	N
	000824 Schieck, David M.	Y

Statement by Mr. Schieck regarding defendant's affidavit and list of witnesses; counsel argued there was no objection to witnesses, and attorneys should be put on the stand to determine if issue was a strategic plan or if it was an oversight. Mr. Schieck requested an evidentiary hearing regarding issue of witnesses and an attempt to show ineffective counsel. Argument by Ms. Robinson; objection by counsel to a hearing. Court indicated appropriate counsel need to be available for questioning so determination can be made regarding witness issue. COURT ORDERED, request for Evidentiary Hearing is GRANTED to see what the information indicates concerning witnesses; matter SET. Upon Court's inquiry, Mr. Schieck stated all counsel are local, and Mr. Schieck will prepare an order to transport defendant from Ely.

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 033

NDC

9/13/02 8:45 A.M. EVIDENTIARY HEARING

09/13/02 08:45 AM 00 EVIDENTIARY HEARING: DEFT'S PETITION FOR  
WRIT OF HABEAS CORPUS

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Alan Castle, Relief Clerk  
Cat Nelson, Reporter/Recorder

PARTIES: STATE OF NEVADA  
003801 Robinson, Lynn M.  
0001 D1 Chappell, James M  
000824 Schieck, David M.

Y  
Y  
N  
Y

Mr. Schieck stated the Petitioner requested not to be present for today's proceeding. Further, he will be supplementing with a waiver of Court's order of Petitioner/Defendant's request for transport. Testimony presented. (See worksheet.) Following witness testimony, Mr. Schieck moved to have witnesses testify as to what they would have said at trial, specifically the penalty phase. Objection by Ms. Robinson. Court DENIED request and ORDERED, Petitioner is allowed to SUPPLEMENT THE RECORD with affidavits from the witnesses. FURTHER ORDERED, set status check regarding affidavits to be included; and written waiver of Deft's presence.

10/1/02 9:00 AM STATUS CHECK: SUPPLEMENT TO THE RECORD

10/01/02 09:00 AM 00 STATUS CHECK: SUPPLEMENT TO THE RECORD

HEARD BY: Joseph S. Pavlikowski, Senior Judge; Dept. VJ30

OFFICERS: Nora Pena, Court Clerk  
Liz Garcia, Reporter/Recorder

PARTIES: STATE OF NEVADA  
005691 Kochevar, Brian J.  
0001 D1 Chappell, James M  
000824 Schieck, David M.

Y  
Y  
N  
Y

Mr. Schieck advised he needs to go to Michigan on November 7th & 8th, he requested a continuance for the first part of December and he will have affidavits filed. COURT ORDERED, matter CONTINUED.

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 034

NDC

CONTINUED TO: 12/03/02 09:00 AM 01

12/03/02 09:00 AM 01 STATUS CHECK: SUPPLEMENT TO THE RECORD

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Nora Pena, Court Clerk  
Kristen Brown/kb, Relief Clerk  
Cat Nelson, Reporter/RecorderPARTIES: STATE OF NEVADA  
006088 Peterson, Clark A.  
0001 D1 Chappell, James M  
000824 Schieck, David M.

Y

Y

N

Y

Mr. Schieck stated he has been to Michigan and will be submitting the affidavit's; still needs to go to Arizona to locate additional witnesses for their affidavit's and requested a CONTINUANCE to file all the affidavit's, COURT SO ORDERED.

NDC

1/21/03 9:00 AM STATUS CHECK: FILING OF AFFIDAVITS

01/21/03 09:00 AM 00 STATUS CHECK: FILING OF AFFIDAVIT

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Nora Pena, Court Clerk  
Sharon Chun/sc, Relief Clerk  
Kit MacDonald, Reporter/RecorderPARTIES: STATE OF NEVADA  
007480 Pate, Susan  
0001 D1 Chappell, James M  
000824 Schieck, David M.

Y

Y

N

Y

Mr. Schieck requested a thirty day continuance, COURT SO ORDERED, CONTINUED.

NDC

CONTINUED TO: 02/25/03 09:00 AM 01



## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 035

02/25/03 09:00 AM 01 STATUS CHECK: FILING OF AFFIDAVIT

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Nora Pena, Court Clerk  
Georgette Byrd/gb, Relief Clerk  
Kit MacDonald, Reporter/Recorder

PARTIES: STATE OF NEVADA  
004577 Coumou, Frank  
  
0001 D1 Chappell, James M  
000824 Schieck, David M.

Y

Y

N

Y

Mr. Schieck stated all the witnesses have signed their affidavits and returned them, however the witness in Arizona has disappeared and requested matter continued two weeks, COURT SO ORDERED.

NDC

CONTINUED TO: 03/11/03 09:00 AM 02

03/11/03 09:00 AM 02 STATUS CHECK: FILING OF AFFIDAVIT

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Carole D'Aloia, Court Clerk  
Kit MacDonald, Reporter/Recorder

PARTIES: STATE OF NEVADA  
006088 Peterson, Clark A.  
  
0001 D1 Chappell, James M  
000824 Schieck, David M.

Y

Y

N

Y

Upon Court's inquiry, Mr. Schieck advised he has been able to secure the affidavits from Michigan and Arizona and requested matter be set for another hearing. Mr. Peterson concurred. Court advised it would like to give Mr. Peterson time to review the affidavits and, ORDERED, matter set for STATUS CHECK.

NDC

3/25/03 9:00 AM STATUS CHECK: STATE'S REVIEW OF AFFIDAVITS

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 036

03/25/03 09:00 AM 00 STATUS CHECK: STATE'S REVIEW OF  
AFFIDAVITS

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Sharon Chun, Court Clerk  
Kit MacDonald, Reporter/Recorder

PARTIES: STATE OF NEVADA  
006088 Peterson, Clark A.  
0001 D1 Chappell, James M  
000824 Schieck, David M.

Y  
Y  
N  
Y

Mr. Peterson stated that Mr. Schieck has provided him with all affidavits and he has no particular objecting using the contents of the Affidavits. He requested the Court consider the possibility of bring in a witness for examination outside presence of jurors, if a witness' testimony is questionable. COURT ORDERED, briefing schedule SET as follows:

Deft's Opening Brief due 4/29/03;  
State's Opposing Brief due 5/26/03;  
Deft's Reply Brief due 6/18/03; and

HEARING: DEFT'S PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) on  
7/7/03 at 10:30 A.M.

NDC

7/7/03 10:30 AM HEARING

CLERK'S NOTE: Deft's Reply due date changed to 6/18/03.

CLERK'S NOTE 7/2/03sc: Hearing date changed FROM 7/7/03 TO 7/8/03 at 9:00  
A.M. per stipulation of counsel.

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 037

07/08/03 09:00 AM 01 HEARING: DEFT'S PETITION FOR WRIT OF  
HABEAS CORPUS (POST CONVICTION)

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Sharon Chun/sc, Court Clerk  
Judy McFadden, Relief Clerk  
Kit MacDonald, Reporter/Recorder

PARTIES: STATE OF NEVADA  
007480 Pate, Susan  
  
0001 D1 Chappell, James M  
000824 Schieck, David M.

Y  
Y  
  
N  
Y

Mr. Schieck stated he needed one week to file his post-hearing brief. COURT  
ORDERED, briefing schedule and hearing SET, as follows:

7/17/03 - Deft's Opening Brief Due;  
8/19/03 - State's Response Due;  
9/02/03 - Hearing

NDC

CONTINUED TO: 09/02/03 09:00 AM 02

09/02/03 09:00 AM 00 MINUTE ORDER RE: HEARING RE WRIT/44

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Sharon Chun, Court Clerk  
Cindy Caldwell, Reporter/Recorder

PARTIES: STATE OF NEVADA  
007480 Pate, Susan  
  
0001 D1 Chappell, James M  
000824 Schieck, David M.

Y  
Y  
  
N  
Y

Mr. Schieck appeared, stating that this matter had been continued by  
Stipulation an Order, but, he was not aware that a date had been set yet.  
COURT ORDERED, Deft's appearance WAIVED at this hearing and matter SET for  
STATUS CHECK re hearing date on 10/21/03.

NDC

CLERK'S NOTE: No continuance date was yet recorded in the computer when  
reviewed/sc.

CLERK'S NOTE 9/17/03-sc: The Stipulation and Order came through with the

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 038

date of 10/07/03 and entered into Blackstone by the Clerk's Office. After speaking to the Dept. XI Law Clerk, it was decided to VACATE the 10/21/03 status check date, since the hearing has been set. A copy of this minute order has been placed in the folders of the District Attorney and Mr. Schieck.

10/07/03 09:00 AM 03 HEARING: DEFT'S PETITION FOR WRIT OF  
HABEAS CORPUS (POST CONVICTION)

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Sharon Chun, Court Clerk  
Kit MacDonald, Reporter/Recorder

PARTIES: STATE OF NEVADA  
006088 Peterson, Clark A.  
0001 D1 Chappell, James M  
000824 Schieck, David M.

Y  
Y  
N  
Y

Mr. Peterson stated he needs three weeks to respond. Mr. Schieck stated he will not need time to Reply.

COURT ORDERED, briefing schedule set, as follows:  
State's Response due 10/28/03 and  
Hearing set for 11/6/03 10:30 AM

NDC

11/6/03 10:30 AM HEARING: DEFT'S PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)

11/06/03 10:30 AM 00 HEARING: DEFT'S PETITION FOR WRIT OF  
HABEAS CORPUS (POST CONVICTION)/47

HEARD BY: Michelle Leavitt, Judge; Dept. 12

OFFICERS: Kristen Brown, Relief Clerk  
Julie Lever, Reporter/Recorder

PARTIES: STATE OF NEVADA  
006526 Turner, Robert B.  
0001 D1 Chappell, James M  
000824 Schieck, David M.

Y  
Y  
N  
Y

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 039

Court stated this case is being retained by Department XI and ORDERED, matter CONTINUED to be heard by Judge Douglas.

NDC

CONTINUED TO: 12/04/03 09:00 AM 01

11/10/03 ??:?? ?M 00 MINUTE ORDER RE: CASE RETAINED BY DEPT  
XI

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Sharon Chun, Court Clerk

PARTIES: NO PARTIES PRESENT

This case is retained by Judge Michael L. Douglas, due to this Court's previous involvement with the case.

NDC

12/04/03 09:00 AM 01 HEARING: DEFT'S PETITION FOR WRIT OF  
HABEAS CORPUS (POST CONVICTION)/47

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Sharon Chun, Court Clerk  
Kit MacDonald, Reporter/Recorder

PARTIES: STATE OF NEVADA  
006088 Peterson, Clark A.  
0001 D1 Chappell, James M  
000824 Schieck, David M.

Y  
Y  
N  
Y

Mr. Peterson requested additional time to supplement the written Response; COURT ORDERED, matter CONTINUED.

CONTINUED TO: 01/22/04 09:00 AM 02

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 040

01/22/04 09:00 AM 02 HEARING: DEFT'S PETITION FOR WRIT OF  
HABEAS CORPUS (POST CONVICTION)/47

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Sharon Chun, Court Clerk  
Kit MacDonald, Reporter/Recorder

PARTIES: 0001 D1 Chappell, James M  
000824 Schieck, David M.

N  
Y

Mr. Schieck stated he spoke to Mr. Peterson yesterday and he has requested a thirty day continuance because of his recent schedule.

COURT ORDERED, matter CONTINUED. Mr. Schieck stated he would advise Mr. Peterson of the continuance date.

CONTINUED TO: 02/26/04 09:00 AM 03

02/26/04 09:00 AM 03 HEARING: DEFT'S PETITION FOR WRIT OF  
HABEAS CORPUS (POST CONVICTION)/47

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Sharon Chun, Court Clerk  
Kit MacDonald, Reporter/Recorder

PARTIES: NO PARTIES PRESENT

The Court advised counsel had requested a continuance; COURT SO ORDERED, the date of 3/18/04 is hereby set.

NDC

CONTINUED TO: 03/18/04 09:00 AM 04

## CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 041

04/02/04 09:00 AM 06 HEARING: DEFT'S PETITION FOR WRIT OF  
HABEAS CORPUS (POST CONVICTION)/47

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: Sharon Chun, Court Clerk  
Dick Kangas, Reporter/Recorder

REQ. BY: Douglas Michael L, Judge; Dept. 11

PARTIES: STATE OF NEVADA  
006088 Peterson, Clark A.  
  
0001 D1 Chappell, James M  
000824 Schieck, David M.

Y

Y

N

Y

Mr. Schieck noted that the argument today centers on whether the trial outcome would have been different if witnesses would have been used during guilt phase and penalty phase. He stated that Mr. Brooks, feels it would have made a difference.

Mr. Peterson argued that in reference to the written opposition and the State's brief; there is overwhelming evidence of guilt. Deft. conceded he killed her and knifed her and then committed sexual assault. He further argued that the killing was established and that the other witnesses went toward domestic violence. He reiterated that the Deft. admitted the killing. There is no prejudice by presumed failure by Deft's counsel and the Petition should be denied.

Mr. Schieck reiterated that Michigan witnesses would have relevance to the jury re the first degree murder and affected the death sentence.

The Court noted that when the Supreme Court denied a rehearing and rendered their opinion on 3/17/99, they cited the fact that jurors returned a verdict of death after finding that the two mitigating circumstances (the murder was committed while under the influence of extreme mental or emotional disturbance and any other mitigating circumstances) did not outweigh four aggravating factors (the murder was committed during the commission of a robbery, burglary, and sexual assault, and the murder involved torture or depravity of mind). As to the penalty phase, Deft and Deft's counsel have an obligation to present evidence.

Pursuant to the Supreme Court's opinion, COURT ORDERED, a new Penalty Hearing is to be held in this matter.

Mr. Schieck was directed to draft the Order.

CLERK'S NOTE 4/13/04sc: S. Chun, Clerk, phoned Mr. Schieck to verify that counsel were going to request a hearing date in the Order. Mr. Schieck responded that he had spoken to Mr. Peterson and that the State was going to

CONTINUED ON PAGE: 043

CRIMINAL COURT MINUTES

95-C-131341-C STATE OF NEVADA

vs Chappell, James M

CONTINUED FROM PAGE: 042

file an Appeal, so no hearing date would yet be requested.



06/18/04  
CASE NO. 95-C-131341-C

E X H I B I T S

2:31 PM  
CASE STATUS: ACTIVE

STATE OF NEVADA

[ ] vs Chappell, James M

[ ]

NO.	CODE	EXHIBIT DESCRIPTION	SUB	OF/OB	DATE	S
0001	P-D	/JUSTICE COURT EXHIBITS	S	/	10/10/95	V
0002	P-1	/1 THRU 60 6X8 PHOTOGRAPHS (#50 NO EXH)	S	AD/NO	10/10/96	V
0003	P-61	/LVMPD EVIDENCE IMPOUND REPORT	S	AD/NO	10/11/96	V
0004	P-62	/LVMPD EVIDENCE IMPOUND REPORT	S	AD/NO	10/10/96	V
0005	P-63	/LVMPD EVIDENCE IMPOUND REPORT	S	AD/NO	10/10/96	V
0006	P-64	/COPY OF SOCIAL SECURITY CARDS (4)	S	AD/NO	10/10/96	V
0007	P-65	/LVMPD EVIDENCE IMPOUND REPORT	S	AD/NO	10/14/96	V
0008	P-66	/3X5 COLOR PHOTOGRAPH OF VICTIM	S	AD/NO	10/14/96	V
0009	P-67	/SEXUAL ASSAULT KIT	S	AD/OB	10/10/96	V
0010	P-68	/EVIDENCE BAG	S	AD/NO	10/10/96	V
0011	P-68A	/BROWN BUTCHER PAPER	S	AD/NO	10/10/96	V
0012	P-68A1	/STEAK KINFE	S	AD/NO	10/10/96	V
0013	P-69	/EVIDENCE ENVELOPE & CONTENTS	S	AD/NO	10/10/96	V
0014	P-70	/EVIDENCE ENVELOPE & CONTENTS	S	AD/NO	10/10/96	V
0015	P-71	/EVIDENCE ENVELOPE & CONTENTS	S	AD/NO	10/10/96	V
0016	P-72	/EVIDENCE ENVELOPE & CONTENTS	S	AD/NO	10/10/96	V
0017	P-73	/EVIDENCE ENVELOPE & CONTENTS	S	AD/NO	10/10/96	V
0018	P-74	/EVIDENCE ENVELOPE & CONTENTS	S	AD/NO	10/10/96	V
0019	P-75	/EVIDENCE BAG & CONTENTS	S	AD/NO	10/10/96	V
0020	P-76	/DIAGRAM	S	AD/NO	10/10/96	V
0021	P-77	/DRAWING	S	AD/NO	10/10/96	V
0022	P-78	/EVIDENCE ENVELOPE	S	AD/NO	10/10/96	V
0023	P-78A	/PLASTIC BAG / CONTENTS	S	AD/NO	10/10/96	V
0024	P-79	/EVIDENCE ENVELOPE	S	AD/NO	10/11/96	V
0025	P-79A	/RIGHT BLACK LACE UP BOOT	S	AD/NO	10/11/96	V
0026	P-80	/EVIDENCE ENVELOPE	S	AD/NO	10/14/96	V
0027	P-80A	/PLASTIC VIAL CONTENTS	S	AD/NO	10/14/96	V
0028	P-81	/APPLICATION FOR TPO BY FAX	S	AD/	10/11/96	V
0029	P-82	/TPO ISSUED BY FAX	S	AD/	10/11/96	V
0030	P-83	/SMALL COLOR PHOTOGRAPH	S	AD/NO	10/11/96	V
0031	P-84	/LARGE BLOW-UP	S	AD/NO	10/11/96	V
0032	P-85	/BLOW-UP	S	AD/NO	10/14/96	V
0033	P-86	/BLOW-UP	S	AD/NO	10/14/96	V
0034	P-87	/SEROLOGY STANDARDS KIT	S	AD/NO	10/14/96	V
0035	P-88	/CURRICULUM VITAE OF THOMAS A WAHL	S	AD/NO	10/14/96	V
0036	P-89	/UMC MEDICAL RECORDS (VICTIM)	S	AD/NO	10/14/96	V
0037	PD	/PENALTY HEARING		/	99/99/99	
0038	P-90	/DEFENDAT'S STATEMENT DTD 3-30-95	S	AD/NO	10/21/96	V
0039	P-91	/LETTER FRM CHRISTINA REES	S	AD/NO	10/22/96	V
0040	P-92	/LETTER FRM DORIS WICHTOSKI	S	AD/NO	10/21/96	V
0041	P-93	/8XX10 COLOR PHOTOGRAPH	S	AD/NO	10/21/96	V
0042	P-94	/SMALL COLOR PHOTOGRAPH	S	AD/NO	10/21/96	V
0043	D-A	/CERTIFIED COPY OF TPO ISSUED BY FAX	0001	/	99/99/99	V
0044	D-B	/CERTIFIED COPY OF MINUTES 11-11-95	0001	AD/NO	10/11/96	V
0045	D-C	/CERTIFIED COPY OF MINUTES 8-1-96	0001	AD/NO	10/21/96	V
0046	D-D	/8X10 COLOR PHOTOGRAPH	0001	AD/NO	10/22/96	V

# County of Clark

**SS:**

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT  
DOCKET ENTRIES; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; NOTICE OF  
ENTRY OF ORDER; DISTRICT COURT MINUTES; EXHIBIT LIST

Defendant(s),

Case No: C131341  
Dept No: IV

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
this 18 day of June 2004.

Shirley B. Parraguirre, Clark County Clerk

ALICE JACOBSON, Deputy Clerk